TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 305

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FRUIT GROWERS EXPRESS COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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In United States District Court, Western District of Pennsylvania

Syllabus of indictment

Counts 1 to 50, inclusive, falsification of icing reports, Form AD–54 (violations of section 20 (7) of interstate commerce act, 24 Stat. L. 379, Feb. 4, 1887, as amended, 34 Stat. L. 584, June 29, 1906).

Counts 51 to 65, inclusive, falsification of freight bills (violations of section 20 (7) of interstate commerce act, 24 Stat. L. 379, Feb. 4, 1887, as amended, 34 Stat. L. 584, June 29, 1906).

Counts 66 to 75, inclusive, aiding, abetting, and procuring of falsification of freight bills (violations of section 10 (1) of interstate commerce act, 24 Stat. L. 379, Feb. 4, 1887; as amended, 25 Stat. L. 855, Mar. 2, 1889; 36 Stat. L. 539, June 18, 1910; 41 Stat. L. 456, Feb. 28, 1920; and section 332 of Penal Code).

Count number	Number and date of Form AD–54	Car initials and number	False weight, in pounds	Correct weight, in pounds
1	57 6/5/25	PFE 4381	2,800	1,800
2	88 6/8/25	FGEX 35846	3,000	1,200
3	95 6/8/25	PFE 28687	2,800	1,800
4	89 6/8/25	WFEX 54183	3,000	4,800
5	150 6/14/25	FGEX 20103	2,800	1,800
6	149 6/14/25	PFE 6068	2,400	1,400
7	321 6/28/25	PFE 23681	2,200	1,200
8	342 6/30/25	PFE 22903	2,600	1,600
9	3 7/1/25	MDT 145642	2,200	1,200
10	7 7/1/25	PFE 10148	1,800	800
11	37 7/5/25	FGEX 32778	2,400	1,400
12	36 7/5/25	NP 99040	2,800	800
13	120 7/12/25	NP 95957	2,000	1,000
14	121 7/12/25	FGEX 23086	2,200	1,200
15	123 7/12/25	PFE 30336	2,500	1,500
16	167 7/15/25	WFEX 61590	2,200	1,200
17	168 7/15/25	SFRD 20817	2,500	1,500
18	174 7/16/25	FGEX 32959	3,000	2,000
19	269 7/24/25	FGEX 40810	2,200	1,200
20	274 7/24/25	PFE 28015	2,500	1,500
21	63 8/6/25	ART 12204	1,800	800
22	87 8/9/25	PFE 24476	3,000	2,000
23	87 8/9/25	FGEX 34796	3,000	2,000
24	123 8/12/25	PFE 13808	2,600	1,600
25	165 8/17/25	PFE 18807	2,300	1,300
26	246 8/23/25	WFEX 63313	2,000	1,200
27	165 8/17/25	PFE 22241	2,400	1,400
28	24 7/3/25	WFEX 62610	3,000	2,000
29	33 7/5/25	PFE 9964	3,000	4,000
30	119 7/12/25	WFEX 49849	3,600	2,600
31	203 7/19/25	FGEX 35095	1,600	600
32	203 7/19/25	PFE 10111	1,800	600

Count number	Number and date of Form AD-54	Car initials and number	False weight, in pounds	Correct weight, in pounds
33	204 7/19/25	WFEX 62529	1,600	[illegible]
34	184 7/17/25	PFE 7987	2,800	1,[illegible]
35	203 7/19/25	FGEX 26006	1,700	[illegible]
36	203 7/19/25	FGEX 33709	1,600	[illegible]
37	203 7/19/25	FGEX 35509	1,800	[illegible]
38	204 7/19/25	FGEX 32969	1,800	[illegible]
39	202 7/19/25	WFEX 62113	1,600	[illegible]
40	328 7/29/25	FGEX 42782	2,600	2,[illegible]
41	328 7/29/25	PFE 23687	2,400	2,[illegible]
42	328 7/29/25	PFE 14400	2,600	2,[illegible]
43	328 7/29/25	PFE 4344	2,400	2,[illegible]
44	329 7/29/25	FGEX 41960	2,100	1,[illegible]
45	334 7/30/25	PFE 26868	3,000	2,[illegible]
46	95 6/8/25	PFE 9459	3,300	3,[illegible]
47	29 7/4/25	FGEX 11013	3,000	3,[illegible]
48	37 7/5/25	FGEX 31668	2,600	4,[illegible]
49	41 7/5/25	FGEX 45837	3,000	4,[illegible]
50	40 7/5/25	FGEX 23332	3,000	4,[illegible]
51	9842 6/3/25	PFE 25839	3,000	1,[illegible]
52	11207 6/10/25	SFRD 12724	3,000	1,[illegible]
53	11211 6/10/25	NP 95730	3,400	4,[illegible]
54	12331 6/16/25	PFE 51736	2,600	1,[illegible]
55	12329 6/16/25	PFE 5120	2,600	1,[illegible]
56	16723 7/7/25	FGEX 31150	2,800	1,[illegible]
57	16724 7/7/25	FGEX 34813	2,200	1,[illegible]
58	16721 7/7/25	FGEX 11035	2,800	1,[illegible]
59	16573 7/7/25	NP 95927	3,000	1,[illegible]
60	19273 7/18/25	WFEX 66113	2,800	2,[illegible]
61	19281 7/18/25	SFRD 8149	3,700	3,[illegible]
62	19256 7/18/25	WFEX 65013	3,000	3,[illegible]
63	20409 7/23/25	SFRD 12615	3,800	4,[illegible]
64	16205 7/9/26	PFE 19004	3,000	2,[illegible]
65	17858 7/19/26	WFEX 63724	4,000	1,[illegible]
66	20412 7/23/25	SFRD 21772	3,800	4,[illegible]
67	25033 8/8/25	ART 15591	1,600	[illegible]
68	25035 8/8/25	SFRD 7137	3,200	4,[illegible]
69	30238 9/2/25	Erie 62033	1,600	2,[illegible]
70	32924 9/16/25	ART 13709	3,000	4,[illegible]
71	33235 9/17/25	ART 15584	1,800	[illegible]
72	33236 9/17/25	ART 15413	1,800	[illegible]
73	33713 9/19/25	NP 93084	1,600	[illegible]
74	19191 7/24/26	FGEX 31054	4,300	4,[illegible]
75	34273 9/27/26	SFRD 13275	2,800	1,[illegible]

1 In United States District Court

Indictment

Filed Nov. 22, 1927

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

The grand jurors of the United States of America, now inquiring in and for the Western District of Pennsylvania, after being duly impaneled, sworn and affirmed, and charged, at the term of said court now pending, upon their oaths and solemn affirmations, respectively, do present:

Count 1

1. That at all times mentioned in this indictment, the Pennsylvania Railroad Company, hereafter in this count called "Railroad Company," was a common carrier engaged in the transportation of property in interstate commerce, wholly by railroad, for hire, from and to points on its line outside the State of Pennsylvania to and from points on its line in the State of Pennsylvania, including Pittsburgh, and so said railroad company was, and still is, subject to the provisions of the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and to the acts of Congress mendatory thereof and supplementary thereto.

2. That at all times mentioned in this indictment said railroad company did print and publish, and keep on file with the Interstate Commerce Commission, schedules and tariffs of refrigeration rates and charges; that said schedules and tariffs provided, among other things, that the bunkers of refrigerator cars containing shipments of perishable commodities, including fruits and vegetables as hereafter named in the several counts of this indictment, which had been transported by said railroad company to said points, including said Pittsburgh, for delivery to consignees at said points, including said Pittsburgh, would be inspected each and every day from the time of the arrival of said cars at said points, including said Pittsburgh, and until the unloading of cars had been commenced by consignees at said points, including said Pittsburgh; and that, whenever additional ice was required in said bunkers, sufficient additional ice to fill said bunkers would be placed therein, at a rate and charge to said consignees of $4.00 for each ton of 2,000 pounds of ice so furnished, except that when the bunkers of said cars were less than three-fourths filled with ice upon arrival of said cars at said points, including said Pittsburgh, the said bunkers of said cars would be iced to capacity and no charge for such arrival icing would be made by said railroad company against said consignees; that under the terms of said schedules and tariffs said rate and charge of $4.00 per ton for the ice so furnished was exclusive of, and in addition to, the lawful rates and charges for the transportation by said railroad company of said shipments of the aforementioned perishable commodities.

3. That at all times mentioned in this indictment the Fruit Growers Express Company, hereinafter called "defendant,"
3 was a corporation organized and existing under and by virtue of the laws of the State of Delaware with an office and place of business at said Pittsburgh, and was engaged, among other things, in the icing and reicing, for and on behalf of said railroad company, at said Pittsburgh, of the bunkers of refrigerator cars containing shipments of the aforementioned perishable commodities which said railroad company had transported over its railway line for delivery to consignees at said points, including said Pittsburgh; that said service of icing and reicing was performed by said defendant, for and on behalf of said railroad company, under, and in accordance with, the terms of a certain contract by and between said defendant and said railroad company, executed on, to wit, May 1, 1925; that said contract provided, among other things, that said defendant would perform at said points, including said Pittsburgh, for and on behalf of said railroad company, the aforesaid inspection and icing service which said railroad company, by and through means of its schedules and tariffs aforementioned, held itself out to perform in connection with shipments of said perishable commodities transported by it to said points, including said Pittsburgh, for delivery thereat.

4. That at all times mentioned in this indictment said railroad company required said defendant to furnish a report in writing of the amount of ice placed in the bunkers of refrigerator cars at said Pittsburgh by said defendant, for and on behalf of said railroad company, and said defendant did furnish and did deliver to said
4 railroad company reports in writing, purporting to show, as to each car inspected by said defendant under the terms of the aforesaid contract, the amount of ice, if any, which said defendant, for and on behalf of said railroad company, had placed in the bunkers of said cars; that said reports, including those thereafter in the several counts of this indictment specifically referred to, were received and kept and accepted by said railroad company as true and correct reports of the amount of ice placed in said bunkers of said cars; and said reports were the only reports and records from which said railroad company could prepare, and render to the consignees of shipments of the aforementioned perishable commodities transported by it for delivery at said points, including said Pittsburgh, statements and bills for ice placed in the bunkers of cars, and of the icing charges due to said railroad company from said consignees under the aforesaid provisions of the aforementioned schedules of refrigeration rates and charges.

5. That on, to wit, June 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said Act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 57" and bearing a cer-

tain date, to wit, June 5, 1925, and covering a shipment of
5 lettuce in a certain refrigerator car bearing the initials and number "PFE 4381" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant for and on behalf of said railroad company, at said Pittsburgh, at 9.30 a. m., on June 5, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2800," purporting to show, and in substance and effect representing and declaring, that on June 5, 1925, at 9.30 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

6 Count 2

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 8, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 88" and bearing date June 8, 1925, and covering a shipment of cabbage in a certain refrigerator car bearing the initials and number "FGEX 35846" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for
7 and on behalf of said railroad company, at said Pittsburgh, at 8.20 a. m., on June 8, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line

opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on June 8, 1925, at 8.20 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,200 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

8 Count 3

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 8, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 95" and bearing date June 8, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "PFE 28687" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been

9 placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh, at 9.00 a. m., on June 8, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2800," purporting to show, and in substance and effect representing and declaring, that on June 8, 1925, at 9.00 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or other-

any quantity of ice in excess of, to wit, 1,800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

10 Count 4

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 8, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 89" and bearing date June 8, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "WFEX 54183" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on
11 behalf of said railroad company, at said Pittsburgh, at 4.20 p. m., on June 8, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "8000," purporting to show, and in substance and effect representing and declaring, that on June 8, 1925, at 4.20 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 8,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice less than, to wit, 4,800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

12 Count 5

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 14, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 150" and bearing date June 14, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 20103" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on

13 behalf of said railroad company, at said Pittsburgh at 1.15 p. m., on June 14, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2800," purporting to show, and in substance and effect representing and declaring, that on June 14, 1925, at 1.15 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise any quantity of ice in excess of, to wit, 1,800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

14 Count 6

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 14, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made,

a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 149" and bearing date June 14, 1925, and covering a shipment of oranges in a certain refrigerator car bearing the initials and number "PFE 6068," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh, at 10.25 a. m., on June 14, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2400," purporting to show, and in substance and effect representing and declaring, that on June 14, 1925, at 10.25 a m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,400 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,400 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count 7

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 28, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 321" and bearing date June 28, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 23681" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for

and on behalf of said railroad company, at said Pittsburgh,
17 at 2.50 p. m., on June 28, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2,200," purporting to show, and in substance and effect representing and declaring, that on June 28, 1925, at 2.50 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,200 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,200 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

18 Count 8

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 30, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 342" and bearing date June 30, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 22983" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendants, for
19 and on behalf of said railroad company, at said Pittsburgh, at 3.25 p. m., on June 30, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2600," purporting to show, and in substance and effect representing and declaring, that on June 30, 1925, at 3.25 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,600 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant,

at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,600 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in the bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

20 Count 9

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 1, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 3" and bearing date July 1, 1925, and covering a shipment of carrots in a certain refrigerator car bearing the initials and number "MDT 145642" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of

21 said railroad company, at said Pittsburgh, at 6.35 a. m., on July 1, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2200," purporting to show, and in substance and effect representing and declaring, that on July 1, 1925, at 6.35 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,200 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,200 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

22 Count 10

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 1, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 7" and bearing date July 1, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 10148" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said

23 Pittsburgh, at 6.20 a. m., on July 1, 1925, did willfully enter and caused to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "1800," purporting to show, and in substance and effect representing and declaring, that on July 1, 1925, at 6.20 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

24 Count 11

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 37" and bearing date July 5, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 32778" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf
25 of said railroad company, at said Pittsburgh, at 4.30 p. m., on July 5, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2400," purporting to show, and in substance and effect representing and declaring, that on July 5, 1925, at 4.30 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,400 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,400 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

26 Count 12

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 36" and bearing date July 5, 1925, and covering a shipment of lettuce in a certain refrigerator car bearing the initials and number "NP 99040" which

had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh,
27 at 1.05 p. m., on July 5, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2800," purporting to show, and in substance and effect representing and declaring, that on July 5, 1925, at 1.05 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

28 Count 13

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 12, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain writ n report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 120" and bearing date July 12, 1925, and covering a shipment of lettuce and peas in a certain refrigerator car bearing the initials and number "NP 95957" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf
29 of said railroad company, at said Pittsburgh, at 1.25 p. m., on July 12, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2000," purporting to show, and in substance and effect representing and declaring, that on July 12, 1925,

at 1.25 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

10 Count 14

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 12, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54, Report No. 121" and bearing date July 12, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 23086" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for

11 and on behalf of said railroad company, at said Pittsburgh, at 5.00 p. m., on July 12, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2200," purporting to show, and in substance and effect representing and declaring, that on July 12, 1925, at 5.00 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2200 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,200 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said

railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

32 Count 15

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 12, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 123" and bearing date July 12, 1925, and covering a shipment of oranges in a certain refrigerator car bearing the initials and number "PFE 30336" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of
33 said railroad company, at said Pittsburgh, at 9.25 a. m., on July 12, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2500," purporting to show, and in substance and effect representing and declaring, that on July 12, 1925, at 9.25 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,500 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,500 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

34 Count 16

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 15, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 167" and bearing date July 15, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "WFEX 61590," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant for and on behalf of said railroad company at said Pittsburgh, at 10.10 a. m., on July 15, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2200," purporting to show, and in substance and effect representing and declaring, that on July 15, 1925, at 10.10 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,200 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,200 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count 17

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 15, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers'

Express Company Form AD-54 Report No. 168" and bearing date July 15, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "SFRD 20817" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for

37 and on behalf of said railroad company, at said Pittsburgh, at 12.30 p. m., on July 15, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2500," purporting to show, and in substance and effect representing and declaring, that on July 15, 1925, at 12.30 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,500 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,500 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

38 Count 18

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 16, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 174" and bearing date July 16, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 32939" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in

39 the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh, at 11.00 a. m., on July 16, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2000," purporting to show, and

in substance and effect representing and declaring, that on July 16, 1925, at 11.00 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

40 Count 19

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 24, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 269" and bearing date July 24, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 40810" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for

41 and on behalf of said railroad company, at said Pittsburgh, at 12 25 p. m., on July 24, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2200," purporting to show, and in substance and effect representing and declaring, that on July 24, 1925, at 12 25 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,200 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,200 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said

railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

42 Count 20

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 24, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 274" and bearing date July 24, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 28015" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf
43 of said railroad company, at said Pittsburgh, at 5.45 a. m., on July 24, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2560," purporting to show, and in substance and effect representing and declaring, that on July 24, 1925, at 5.45 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,560 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,560 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

44 Count 21

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 6, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers' Express Company Form AD-54 Report No. 63" and bearing date August 6, 1925, and covering a shipment of lettuce in a certain refrigerator car bearing the initials and number "ART 12294" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pitts-
45 burgh, at 5.10 p. m., on August 6, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "1800," purporting to show, and in substance and effect representing and declaring, that on August 6, 1925, at 5.10 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

46 Count 22

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 9, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers'

Express Company Form AD–54 Report No. 87" and bearing date August 9, 1925, and covering a shipment of pears and plums in a certain refrigerator car bearing the initials and number "PFE 24476," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for
47 and on behalf of said railroad company, at said Pittsburgh, at 7.55 a. m., on August 9, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring that on August 9, 1925, at 7.55 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

48 **Count 23**

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 9, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 87" and bearing date August 9, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 34796" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pitts-
49 burgh, at 7.45 a. m., on August 9, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice" or "be

line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on August 9, 1925, at 7.45 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

50 Count 24

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 12, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 123" and bearing date August 12, 1925, and covering a shipment of pears in a certain refrigerator car bearing the initials and number "PFE 13808" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at

51 said Pittsburgh, at 8.00 a. m., on August 12, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2600," purporting to show, and in substance and effect representing and declaring, that on August 12, 1925, at 8.00 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,600 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on

behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

52 Count 25

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 17, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 165" and bearing date August 17, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 18807" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company at said Pittsburgh,

53 at 6.30 a. m., on August 17, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2500," purporting to show, and in substance and effect representing and declaring, that on August 17, 1925, at 6.30 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,500 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,500 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

34 Count 26

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 23, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 246" and bearing date August 23, 1925, and covering a shipment of cabbage in a certain refrigerator car bearing the initials and number WFEX 6313" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said

35 Pittsburgh, at 3.40 p. m., on August 23, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2200," purporting to show, and in substance and effect representing and declaring, that on August 23, 1925, at 3.40 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,200 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,200 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

36 Count 27

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 17, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully and willfully did make, and cause

to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 165" and bearing date August 17, 1925, and covering a shipment of prunes, in a certain refrigerator car bearing the initials and number "PFE 22241" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant,

57 for and on behalf of said railroad company, at said Pittsburgh, at 6.35 a. m., on August 17, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2400," purporting to show, and in substance and effect representing and declaring, that on August 17, 1925, at 6.35 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,400 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,400 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

58 Count 28

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 3, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 24" and bearing date July 3, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "WFEX 62610" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which

said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh, at 12.15 p. m., on July 3, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 3, 1925, at 12.15 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count 29

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 report No. 33" and bearing date July 5, 1925 and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 9964" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh, at 4.45 p. m., on July 5, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 5, 1925, at 4.45 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and

placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice less than of, to wit, 4,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

62 Count 30

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 12, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers' Express Company Form AD-54, Report No. 119," and bearing date July 12, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "WFEX 4984," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for
63 and on behalf of said railroad company, at said Pittsburgh, at 8.10 a. m., on July 12, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 12, 1925, at 8.10 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and

correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

64 Count 31

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 203" and bearing date July 19, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 3005" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said

65 Pittsburgh, at 2.45 p. m., on July 19, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "1600," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 2.45 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,600 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 600 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

66 Count 32

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to

and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 203" and bearing date July 19, 1925, and covering a shipment of pears in a certain refrigerator car bearing the initials and number "PFE 10111" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on
67 behalf of said railroad company, at said Pittsburgh, at 12.50 p. m., on July 19, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "1800," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 12.50 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 600 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

68 Count 33

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54, Report No. 204" and bearing date

July 19, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "WFEX 62529," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf
69 of said railroad company, at said Pittsburgh, at 2.50 p. m., on July 19, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "1600," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 2.50 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,600 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 600 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

70 Count 34

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 17, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 184" and bearing date July 17, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 7987" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf
71 of said railroad company, at said Pittsburgh, at 8.10 a. m., on July 17, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and

number of said car, the figures "2800," purporting to show, and in substance and effect representing and declaring, that on July 17, 1925, at 8.10 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

72 Count 35

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers' Express Company Form AD-54 Report No. 205" and bearing date July 19, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 26006" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf

73 of said railroad company, at said Pittsburgh, at 2.20 p. m., on July 19, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "1700," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 2.20 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,700 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quan-

tity of ice in excess of, to wit, 700 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in the bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

74 Count 36

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby refererd to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennnsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers' Express Company Form AD–54 Report No. 203" and bearing date July 19, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 33709," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for
75 and on behalf of said railroad company, at said Pittsburgh, at 2.25 p. m., on July 19, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car the figures "1000," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 2.25 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 600 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

76 Count 37

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 302" and bearing date July 19, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 35509" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on

77 behalf of said railroad company, at said Pittsburgh, at 2.30 p. m., on July 19, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "1800," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 2.30 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

78 Count 38

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 204" and bearing date July 19, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 22969" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said
79 Pittsburgh, at 3.00 p. m., on July 19, 1925, did willfully enter and caused to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "1800," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 3.00 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,800 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

80 Count 39

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD–54 Report No. 202" and bearing date July 19, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "WFEX 62113"

which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh

81 at 12.25 p. m., on July 19, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "1600," purporting to show, and in substance and effect representing and declaring, that on July 19, 1925, at 12.35 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 1,600 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 600 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

82 Count 40

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 29, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 328" and bearing date July 29, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 42782" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf

83 of said railroad company, at said Pittsburgh, at 6.05 a. m., on July 29, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2000," purporting to show, and in substance and effect representing and declaring, that on July 29, 1925, at 6.05 a. m., the said defendant, at said Pittsburgh, for and on behalf

of said railroad company, had furnished and placed 2,600 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

84 Count 41

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 29, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers' Express Company Form AD-54 Report No. 328" and bearing date July 29, 1925, and covering a shipment of pears in a certain refrigerator car bearing the initials and number "PFE 23687" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of

85 said railroad company, at said Pittsburgh, at 6.35 a. m., on July 29, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2400," purporting to show, and in substance and effect representing and declaring, that on July 29, 1925, at 6.35 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,400 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight

of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

86 Count 42

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 29, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers' Express Company Form AD-54 Report No. 328" and bearing date July 29, 1925, and covering a shipment of pears in a certain refrigerator car bearing the initials and number "PFE 14400" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in

87 the bunkers of said car by said defendant, for and on behalf of said railroad company, at said Pittsburgh, at 6.45 a. m., on July 29, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2000," purporting to show, and in substance and effect representing and declaring, that on July 29, 1925, at 6.45 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

88 Count 43

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to

and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 29, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54, Report No. 328," and bearing date July 29, 1925, and covering a shipment of pears in a certain refrigerator car bearing the initials and number "PFE 4344," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and
89 on behalf of said railroad company, at said Pittsburgh, at 8.50 a. m., on July 29, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2400," purporting to show, and in substance and effect representing and declaring, that on July 29, 1925, at 8.50 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,400 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

90 Count 44

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 29, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 329" and bear-

ing date July 29, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 41960" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said
91 Pittsburgh, at 12.35 p. m., on July 29, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "2100," purporting to show, and in substance and effect representing and declaring, that on July 29, 1925, at 12.35 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,100 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 1,500 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

92 Count 45

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 30, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 334" and bearing date July 30, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 26868" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at
93 said Pittsburgh, at 7.50 a. m., on July 30, 1925, did willfully enter and cause to be entered under the heading "Furnished Ice,"

on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 30, 1925, at 7.30 a m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice in excess of, to wit, 2,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

94 Count 46

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 8, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54, Report No. 95," and bearing date June 8, 1925, and covering a shipment of oranges in a certain refrigerator car bearing the initials and number "PFE 9459," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf
95 of said railroad company, at said Pittsburgh, at 6.40 a. m., on June 8, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "3300," purporting to show, and in substance and effect representing and declaring, that on June 8, 1925, at 6.40 a. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,300 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quan-

tity of ice less than, to wit, 5,100 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

96 Count 47

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 4, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 29" and bearing date July 4, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "FGEX 11013" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf
97 of said railroad company, at said Pittsburgh, at 12.05 p. m., on July 4, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 4, 1925, at 12.05 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice less than, to wit, 5,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

98 Count 48

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 37" and bearing date July 5, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 31668" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on
99 behalf of said railroad company, at said Pittsburgh, at 5.50 p. m., on July 5, 1925, did willfully enter and cause to be entered, under the heading "Furnished ice," on the line opposite said initials and number of said car, the figures "2600," purporting to show, and in substance and effect representing and declaring, that on July 5, 1925, at 5.50 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 2,600 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice less than, to wit, 4,800 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

100 Count 49

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 41," and bearing date July 5, 1925, and covering a shipment of beans, cucumbers, and egg plants in a certain refrigerator car bearing the initials and number "FGEX 45837," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company, at said
101 Pittsburgh, at 8.05 p. m., on July 5, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 5, 1925, at 8.05 p. m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice less than, to wit, 4,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

102 Count 50

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written report, designated and styled "Fruit Growers Express Company Form AD-54 Report No. 40" and bearing date July 5, 1925, and covering a shipment of corn, beans, tomatoes, and cucumbers in a certain refrigerator car bearing the initials and number "FGEX 23352" which had been transported by said railroad com-

pany to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, which said report contained information as to the quantity of ice which had been placed in the bunkers of said car by said defendant, for and on behalf of said railroad company,
103 at said Pittsburgh, at 10.05 a. m., on July 5, 1925, did willfully enter and cause to be entered, under the heading "Furnished Ice," on the line opposite said initials and number of said car, the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 5, 1925, at 10.05 a m., the said defendant, at said Pittsburgh, for and on behalf of said railroad company, had furnished and placed 3,000 pounds of ice in the bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said defendant, at the time and place stated, had not placed in the bunkers of said car, for and on behalf of said railroad company, or otherwise, any quantity of ice less than, to wit, 4,000 pounds; and that said defendant did willfully deliver and cause to be delivered the said report to said railroad company with intent that said railroad company should accept said false weight shown therein as the true and correct weight of the ice placed in bunkers of said car; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

104 Count 51

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 3, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 9842," and bearing a certain date, to wit, June 3, 1925, and covering a shipment of lettuce in a certain refrigerator car bearing the initials and number "PFE 25859" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight
105 bill to have been placed in the bunkers of said car at said Pittsburgh at 9.30 a. m., on June 1, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3000," purporting to show, and in

to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 10, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 11211," and bearing a certain date, to wit, June 10, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "NP 95730" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight bill

111 to have been placed in the bunkers of said car at said Pittsburgh at 8.35 a. m., on June 8, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3400," purporting to show, and in substance and effect representing and declaring, that on June 8, 1925, at 8.35 a. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 3,400 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car any quantity of ice less than, to wit, 4,400 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, June 8, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report,

112 hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 95," and bearing a certain date, to wit, June 8, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on at 8.35 a. m., 3,000 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than of, to wit, 4,400 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company,

or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

113 Count 54

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 16, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 12331," and bearing a certain date, to wit, June 16, 1925, and covering a shipment of cauliflower and artichokes in a certain refrigerator car bearing the initials and number "PFE 51736" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice
114 represented by said freight bill to have been placed in the bunkers of said car at said Pittsburgh at 12.15 p. m., on June 14, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "2600," purporting to show, and in substance and effect representing and declaring, that on June 14, 1925, at 12.15 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 2,600 pounds of ice in said bunker of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice in excess of, to wit, 1,600 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, June 14, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in
115 this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad com-

pany, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD–54 Report No. 149," and bearing a certain date, to wit, June 14, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on June 14, 1925, at 12.15 p. m., 2,600 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,600 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

116 Count 55

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, June 16, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 12329," and bearing a certain date, to wit, June 16, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 5120" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said
117 freight bill to have been placed in the bunkers of said car at said Pittsburgh at 10.00 a. m., on June 14, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "weight," the figures "2000," purporting to show, and in substance and effect representing and declaring, that on June 14, 1925, at 10.00 a. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 2,600 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car any quantity of ice in excess of, to wit, 1,600 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and

by the means following, to wit, that said defendant on, to wit, June 14, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the
118 written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD–54 Report No. 149," and bearing a certain date, to wit, June 14, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on June 14, 1925, at 10.00 a. m., 2,600 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,600 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

119 Count 56

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 7, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 16723," and bearing a certain date, to wit, July 7, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 31150" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight bill to have been
120 placed in the bunkers of said car at said Pittsburgh at 1.40 p. m., on July 4, 1925, did wilfully enter and cause to be entered in a column of said freight bill bearing the caption "Weight," the figures "2800," purporting to show, and in substance and effect representing and declaring, that on July 4, 1925, at 1.40 p. m., the

said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 2,800 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice in excess of, to wit, 1,800 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 4, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business, and in accordance with its established custom, would rely upon the written report, hereafter
121 in this count specifically mentioned, as containing true and accurate statements and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD–54 Report No. 29," and bearing a certain date, to wit, July 4, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 4, 1925, at 1.40 p. m., 2,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,800 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

122 Count 37

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 7, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 16724," and bearing a certain date, to wit, July 7, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX

34813," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight bill to have
123 been placed in the bunkers of said car at said Pittsburgh at 1.35 p. m., on July 4, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "2200," purporting to show, and in substance and effect representing and declaring, that on July 4, 1925, at 1.35 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 2,200 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice in excess of, to wit, 1,200 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 4, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would
124 rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54, Report No. 29," and bearing certain date, to wit, July 4, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 4, 1925, at 1.35 p. m., 2,200 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,200 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

125 Count 58

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 7, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 16721," and bearing a certain date, to wit, July 7, 1925, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "FGEX 11035" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said
126 freight bill to have been placed in the bunkers of said car at said Pittsburgh at 1.55 p. m., on July 4, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "2800," purporting to show, and in substance and effect representing and declaring, that on July 4, 1925, at 1.55 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 2,800 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car any quantity of ice in excess of, to wit, 1,800 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 4, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the
127 written report, hereafter in this count specifically mentioned as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 29," and bearing a certain date, to wit, July 4, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on at 1.55 p. m., 2,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,800 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

128 Count 39

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 7, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 16573," and bearing a certain date, to wit, July 7, 1925, and covering a shipment of lettuce in a certain refrigerator car bearing the initials and number "NP 9927" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for

129 the quantity of ice represented by said freight bill to have been placed in the bunkers of said car at said Pittsburgh at 4.45 p. m., on July 5, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 5, 1925, at 4.45 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 3,000 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car any quantity of ice in excess of, to wit, 1,000 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 5, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its

130 established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 37," and bearing a certain date, to wit, July 5, 1925, that said defendant, for and on behalf of said railroad company, had

placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 5, 1925, at 4.45 p. m., 3,000 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,000 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

131 Count 60

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 18, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 19273," and bearing a certain date, to wit, July 18, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "WFEX 66113" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight bill to have been
132 placed in the bunkers of said car at said Pittsburgh at 12.30 p. m., on July 16, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "2800," purporting to show, and in substance and effect representing and declaring, that on July 16, 1925, at 12.30 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 2,800 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice in excess of, to wit, 2,000 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 16, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established

custom, would rely upon the written report, hereafter in this
133 count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD–54 Report No. 176," and bearing a certain date, to wit, July 16, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 16, 1925, at 12.30 p. m., 2,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 2,000 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

134 Count 61

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 18, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 19281," and bearing a certain date, to wit, July 18, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "SFRD 8149" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by
the consignee for the quantity of ice represented by said freight
135 bill to have been placed in the bunkers of said car at said Pittsburgh at 2.25 p. m., on July 16, 1925, did wilfully enter and cause to be entered, in the column of said freight bill bearing the caption "weight," the figures "3700," purporting to show, and in substance and effect representing and declaring, that on July 16, 1925, at 2.25 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 3,700 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and

place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice less than, to wit, 5,700 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 16, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the
136 written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 174," and bearing a certain date, to wit, July 16, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 16, 1925, at 2.25 p. m., 3,700 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 5,700 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

137 Count 62

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 18, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 19256," and bearing a certain date, to wit, July 18, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "WFEX 63013" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the

consignee for the quantity of ice represented by said freight
138 bill to have been placed in the bunkers of said car at said Pittsburgh at 10.45 a. m., on July 16, 1925, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3000," purporting to show and in substance and effect representing and declaring, that on July 16, 1925, at 10.45 a. m., the said railroad company, at said Pittsburgh, had placed and had caused to be placed, 3,000 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice less than, to wit, 5,000 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 16, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report,
139 hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 178," and bearing a certain date, to wit, July 16, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 16, 1925, at 10.45 a. m., 3,000 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 5,000 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

140 Count 63

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 23, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court,

said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 20409," and bearing a certain date, to wit, July 23, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "SFRD 12615," which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight
141 bill to have been placed in the bunkers of said car at said Pittsburgh at 5.50 p. m., on July 21, 1925, did wilfully enter and cause to be entered, in a column of said freight bills bearing the caption "Weight," the figures "3800," purporting to show, and in substance and effect representing and declaring, that on July 21, 1925, at 5.50 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 3,800 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice less than, to wit, 4,800 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 21, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, here-
142 after in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54, Report No. 231," and bearing a certain date, to wit, July 21, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 21, 1925, at 5.50 p. m., 3,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 4,800 pounds had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

143

Count 64

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 9, 1926, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did wilfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 16205," and bearing a certain date, to wit, July 9, 1926, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "PFE 19004" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight

144 bill to have been placed in the bunkers of said car at said Pittsburgh at 2.35 p. m., on July 8, 1926, did wilfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3000," purporting to show, and in substance and effect representing and declaring, that on July 8, 1926, at 2.35 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 3,000 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car, any quantity of ice in excess of, to wit, 2,000 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there wilfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following, to wit, that said defendant on, to wit, July 8, 1926, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the

145 written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did wilfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 78," and bearing a certain date, to wit, July 8, 1926, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at

said Pittsburgh, on July 8, 1926, at 2.35 p. m., 3,000 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 2,000 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

146 Count 65

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 19, 1926, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant, while acting as aforesaid under the terms of the aforesaid contract, unlawfully did willfully make, and cause to be made, a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended; that is to say, said defendant, in a certain written freight bill kept by said railroad company, designated and styled "Freight Bill No. 17858," and bearing a certain date, to wit, July 19, 1926, and covering a shipment of peaches in a certain refrigerator car bearing the initials and number "WFEX 63724" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the consignee for the quantity of ice represented by said freight

147 bill to have been placed in the bunkers of said car at said Pittsburgh at 3.35 p. m., on July 18, 1926, did willfully enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "4000," purporting to show, and in substance and effect representing and declaring, that on July 18, 1926, at 3.35 p. m., the said railroad company, at said Pittsburgh, had placed, and had caused to be placed, 4,000 pounds of ice in said bunkers of said car; whereas, in truth and in fact, as said defendant then and there well knew, said railroad company, at the time and place stated, had neither placed nor caused to be placed in said bunkers of said car any quantity of ice in excess of, to wit, 1,000 pounds; that said defendant, while acting as aforesaid under the terms of the aforesaid contract, did then and there willfully make, and cause to be made, the false entry aforesaid, in the manner and by the means following to wit, that said defendant on, to wit, July 18, 1926, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, then and there well knowing that said railroad company, in its regular course of business and

in accordance with its established custom, would rely upon
148 the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report, did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD–54 Report No. 206," and bearing a certain date, to wit, July 18, 1926, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 18, 1926, at 3.35 p. m., 4,000 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,600 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

149 Count 66

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 23, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 20412," and bearing a certain date to wit, July 23, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "SFRD 21772" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been
furnished and placed in the bunkers of said car at said Pitts-
150 burgh, at 4.20 p. m., on July 21, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3800," purporting to show, and in substance and effect representing and declaring, that on July 21, 1925, at 4.20 p. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 3,800 pounds

of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice less than, to wit, 4,800 pounds.

3. That on, to wit, July 21, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report,

151 did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 231," and bearing a certain date, to wit, July 21, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittburgh, on July 21, 1925, at 4.20 p. m., 3,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 4,800 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of sai railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

152 Count 67

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 8, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 25033," and bearing a certain date, to wit, August 8, 1925, and covering a shipment of lettuce in a certain refrigerator car bearing the initials and number "ART 15591,"

which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the bunkers of said car at said Pitts-
153 burgh, at 5.00 p. m., on August 6, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "1600," purporting to show, and in substance and effect representing and declaring, that on August 6, 1925, at 5.00 p. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 1,600 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice in excess of 600 pounds.

3. That on, to wit, August 6, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car; that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report,
154 did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers' Express Company Form AD-54, Report No. 63," and bearing a certain date, to wit, August 6, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on August 6, 1925, at 5.00 p. m., 1,600 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 600 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

155 Count 68

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to

and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, August 8, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 25035," and bearing a certain date, to wit, August 8, 1925, and covering a shipment of cantaloupes in a certain refrigerator car bearing the initials and number "SFRD 7137" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the bunkers of said
156 car at said Pittsburgh, at 3.45 p. m., on August 6, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3200," purporting to show, and in substance and effect representing and declaring, that on August 6, 1925, at 3.45 p. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 3,200 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice less than, to wit, 4,200 pounds.

3. That on, to wit, August 6, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth
157 in, said written report, did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 63," and bearing a certain date, to wit, August 6, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on August 6, 1925, at 3.45 p. m., 3,200 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 4,200 pounds,

had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

158 Count 69

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, September 2, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 30238," and bearing a certain date, to wit, September 2, 1925, and covering a shipment of pears in a certain refrigerator car bearing the initials and number "Erie 62033" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the bunkers of said car at
159 said Pittsburgh, at 10.20 a. m., on August 31, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "1600," purporting to show, and in substance and effect representing and declaring, that on August 31, 1925, at 10.20 a. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 1,600 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice less than, to wit, 2,600 pounds.

3. That on, to wit, August 31, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count

specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report,

160 did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 354," and bearing a certain date, to wit, August 31, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on August 31, 1925, at 10.20 a. m., 1,600 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 2,600 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

161 Count 70

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, September 16, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 32924," and bearing a certain date, to wit, September 16, 1925, and covering a shipment of cabbage in a certain refrigerator car bearing the initials and number "ART 13709" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the bunkers of said

162 car at said Pittsburgh, at 11.50 a. m., on September 13, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "3000," purporting to show, and in substance and effect representing and declaring, that on September 13, 1925, at 11.50 a. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 3,000 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had

not been placed in said bunkers of said car, at the time and place stated, any quantity of ice less than, to wit, 4,600 pounds.

3. That on, to wit, September 13, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car; that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report,

163 did willfully repersent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD–54 Report No. 212," and bearing a certain date, to wit, September 13, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on September 13, 1925, at 11.50 a. m., 3,000 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 4,600 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

164 Count 71

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, September 17, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 33235," and bearing a certain date, to wit, September 17, 1925, and covering a shipment of lettuce in a certain refrigerator car bearing the initials and number "ART 15584" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh

to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the
165 bunkers of said car at said Pittsburgh, at 9.00 a. m., on September 15, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "1800," purporting to show, and in substance and effect representing and declaring, that on September 15, 1925, at 9.00 a. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 1,800 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice in excess of 800 pounds.

3. That on, to wit, September 15, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said
166 written report, did willfully represent to said railroad company, through and by means of certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 252," and bearing a certain date, to wit, September 15, 1925, that said defendant, for and on behalf of said railroad Company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on September 15, 1925, at 9.00 a. m., 1,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 800 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

167 Count 72

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, September 17, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and

accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 33236," and bearing a certain date, to wit, September 17, 1925, and covering a shipment of lettuce in a certain refrigerator car bearing the initials and number "ART 15413" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the bunkers of said car at
168 said Pittsburgh, at 8.50 a. m., on September 15, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "1800," purporting to show, and in substance and effect representing and declaring, that on September 15, 1925, at 8.50 a. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 1,800 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice in excess of 800 pounds.

3. That on, to wit, September 15, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said written report,
169 did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 252," and bearing a certain date, to wit, September 15, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on September 15, 1925, at 8.50 a. m., 1,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fradulent, in that no quantity of ice in excess of, to wit, 800 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

170 Count 73

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, September 19, 1925, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 33713," and bearing a certain date, to wit, September 19, 1925, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "NP 93084" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said

171 freight bill to have been furnished and placed in the bunkers of said car at said Pittsburgh, at 7.10 a. m., on September 17, 1925, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "1600," purporting to show, and in substance and effect representing and declaring, that on September 17, 1925, at 7.10 a. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 1,600 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice in excess of 600 pounds.

3. That on, to wit, September 17, 1925, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth

172 in, said written report, did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Com-

pany Form AD–54 Report No. 292," and bearing a certain date, to wit, September 17, 1925, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on September 17, 1925, at 7.10 a. m., 1,600 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 600 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the from of the statute in such case made and provided and against the peace and dignity of the United States.

173 Count 74

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, July 24, 1926, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 19101," and bearing a certain date, to wit, July 24, 1926, and covering a shipment of apples in a certain refrigerator car bearing the initials and number "FGEX 31054" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the bunkers of said car at said Pitts-
174 burgh, at 6.00 p. m., on July 23, 1926, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "4300," purporting to show, and in substance and effect representing and declaring, that on July 23, 1926, at 6.00 p. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 4,300 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice less than, to wit, 6,300 pounds.

3. That on, to wit, July 23, 1926, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure,

aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth
175 in, said written report, did willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD-54 Report No. 318," and bearing a certain date, to wit, July 23, 1926, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on July 23, 1926, at 6.00 p. m., 4,300 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice less than, to wit, 6,300 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

176 Count 75

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present:

1. The facts set forth in paragraphs numbered 1, 2, 3, and 4 of count 1 of this indictment, which said facts are hereby referred to and incorporated in this count as fully as if they were herein repeated.

2. That on, to wit, September 27, 1926, at said Pittsburgh, said railroad company (not here indicted), relying upon the truth and accuracy of the statements and representations in the report in writing furnished to said railroad company by said defendant, and hereafter in this count specifically mentioned, did make, and cause to be made, a false entry in a record kept by said railroad company; that is to say, that said railroad company, in a certain written freight bill, designated and styled "Freight Bill No. 34273," and bearing a certain date, to wit, September 27, 1926, and covering a shipment of grapes in a certain refrigerator car bearing the initials and number "SFRD 13275" which had been transported by said railroad company to said Pittsburgh for delivery at said Pittsburgh to the consignee thereof, said freight bill being for charges to be paid by the said consignee for the quantity of ice represented by said freight bill to have been furnished and placed in the bunkers of said car at
177 said Pittsburgh, at 12.05 p. m., on September 26, 1926, did enter and cause to be entered, in a column of said freight bill bearing the caption "Weight," the figures "2800," purporting to show,

and in substance and effect representing and declaring, that on September 26, 1928, at 12.05 p. m., the said railroad company, at said Pittsburgh, had furnished and placed, and had caused to be furnished and placed, 2,800 pounds of ice in the said bunkers of said car; which said representation and declaration as to the weight of ice placed in said bunkers of said car were false, in that there had not been placed in said bunkers of said car, at the time and place stated, any quantity of ice in excess of 1,800 pounds.

3. That on, to wit, September 26, 1926, at said Pittsburgh, in the Western District of Pennsylvania, and within the jurisdiction of this court, said defendant unlawfully did willfully cause, procure, aid, and abet said railroad company to make the aforementioned false entry in said freight bill as to the quantity of ice furnished and placed in said bunkers of said car, that is to say, said defendant at said Pittsburgh, then and there well knowing that said railroad company, in its regular course of business and in accordance with its established custom, would rely upon the written report, hereafter in this count specifically mentioned, as containing true and accurate statements, and would prepare and render the aforesaid freight bill based upon the information shown by, and set forth in, said
178 written report, and willfully represent to said railroad company, through and by means of a certain written report designated and styled "Fruit Growers Express Company Form AD–54 Report No. 477," and bearing a certain date, to wit, September 26, 1926, that said defendant, for and on behalf of said railroad company, had placed in the bunkers of the aforementioned car, at said Pittsburgh, on September 26, 1926, at 12.05 p. m., 2,800 pounds of ice, said representation, as said defendant then and there well knew, being false and fraudulent, in that no quantity of ice in excess of, to wit, 1,800 pounds, had been placed in the said bunkers of said car, at the time and place stated, by said defendant, for and on behalf of said railroad company, or otherwise; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

JOHN D. MEYER,
United States Attorney.

178½ [File indorsement omitted.]

179 In United States District Court

UNITED STATES OF AMERICA vs. FRUIT GROWERS EXPRESS COMPANY, A CORPORATION	No. 3957, Criminal

Motion for writ of venire facias ad respondendum and order allowing same

And now, to wit, December 1, A. D. 1927, comes John D. Meyer, United States attorney, and moves the court to order that a writ of

venire facias ad respondendum issue against the defendant in the above entitled case, the Fruit Growers Express Company, a corporation, commanding said defendant to appear and either plead or demur to the indictment herein filed at the above number on or before the 16th day of December, A. D. 1927.

JOHN D. MEYER,
United States Attorney.

Order

And now, to wit, December 1, A. D. 1927, on consideration of the foregoing motion, it is ordered that a writ of venire facias ad respondendum be issued against defendant Fruit Growers Express Company, commanding it to appear and either plead or demur to the indictment herein filed, on or before the 16th day of December, 1927, and it is ordered that the said writ be served forthwith.

R. M. GIBSON,
United States District Judge.

DEC. 1, 1927.

180 In United States District Court

[Title omitted.]

Writ of venire facias ad respondendum and marshal's return

The President of the United States to the marshal of the Western District of Pennsylvania, greeting:

Whereas, in the District Court of the United States for the Western District of Pennsylvania, on November 22, 1927, an indictment was filed at No. 3957 Criminal Docket of the said court against the Fruit Growers Express Company, a corporation, charging it with a violation of falsification of railroad records, aiding & abetting in falsification railroad records, a copy of which complaint having been filed as said No. 3957, Criminal.

And whereas, the said court on the 1st day of December, 1927, on application of the United States district attorney, made an order permitting the issuance of this writ; now by virtue thereof

We command you that you summon the Fruit Growers Express Company, a corporation, so that it be and appear before our said court at Pittsburgh, Pa., in said district, on or before the 16th day of December, 1927, to plead to, demur, or answer the said indictment.

And have you then and there this writ.

Witness the honorable the judges of the District Court of the United States for the Western District of Penna., at Pittsburgh, Pa., this 1st day of December, A. D. 1927, and in the 152nd year of the independence of the U. S.

J. WOOD CLARK, *Clerk.*

DEC. 6, 1927.
Form No. 282.

Return on service of writ

UNITED STATES OF AMERICA, WESTERN DISTRICT OF PENNA., *ss:*

I hereby certify and return that I served the annexed writ of venire facias as responendum on the therein-named Fruit Growers Express Company, a corporation, by handing to and leaving a true and correct copy thereof with R. J. Andrews, agent for said company, at Pittsburgh, Pa., in said district, on the 6th day of December, A. D. 1927.

Service, $2.00.
Mileage, .24.

$

JAMES C. MCGREGOR, *U. S. Marshal.*
J. F. AUSTIN, *Deputy.*

181 In United States District Court

[Title omitted.]

Praecipe for appearance

Dec. 12, 1927

To J. WOOD CLARK, Esq., *Clerk.*

Enter our appearance as counsel for the defendant in the above case.

DALZELL, FISHER & DALZELL,
Attorneys for Defendant.

182 In United States District Court

[Title omitted.]

Motion ex parte defendant to quash the indictment

Filed April 13, 1928

And now, April 13th, 1928, comes the above-named defendant, by its attorneys, Dalzell, Fisher & Dalzell, and moves the court to quash the indictment in the above case, and assigns as reasons therefore the following, to wit:

1. That there is no allegation in the indictment that the defendant is a common carrier, and the interstate commerce act, which is the law upon which the indictment is based, applies only to common carriers and their directors, officers, agents and employees, or persons legally occupying like positions.

2. That the defendant is described in the indictment as a corporation which performed the acts complained of as a "contractor," under a written contract with a common carrier railroad to perform said

acts in accordance with the terms of said contract, and not as agent or employee of such common carrier.

3. That counts 1–50 each charge the making by the defendant of a "false entry in a record kept by a common carrier subject to said act to regulate commerce as amended," whereas the averments of the indictment affirmatively show that the false entries were made in the records of the defendant and not in those "kept" by the common carrier.

183 4. That counts 51–65 each charge the making by the defendant of a "false entry" in a freight bill issued by the common carrier to its customers, whereas the averments of the indictment affirmatively show that the contents of said bills were made up wholly by the carrier from records kept by said carrier in accordance with the requirements of said act.

5. That counts 66–75 each charge the defendant with wilfully causing, procuring, aiding, and abetting the common carrier to make a false entry in a freight bill, whereas the averments of the indictment affirmatively show that the defendant did not and could not make false entries in the records "kept" by the common carrier, from which said bills were wholly made up.

6. That the indictment is fatally defective in that it does not charge that any false entry was "wilfully" made in a common carrier record by such common carrier, or any director, officer, agent, or employe thereof, or by any other person designated and described in the act upon which the indictment is based.

7. That the defendant corporation is not "a person acting for or employed by" a common carrier corporation, within the true meaning and intent of said act, since it clearly appears that the section of the act invoked applies only to common carriers and to such natural persons as shall occupy to said carrier one of the several classes of relationship therein named.

8. That the indictment as a whole is legally defective and void, in that it fails to charge the defendant with the commission of any offense or violation of the penal laws of the United States.

DALZELL, FISHER & DALZELL,
Attorneys for the Defendant.

184 In United States District Court

Rule to show cause

And now, April 13, 1928, the above motion to quash presented in open court, and upon consideration thereof a rule is granted on the United States attorney to show cause why said indictment should not be quashed, returnable to the 24th day of April, 1928.

Per curiam.

G.

[File indorsement omitted.]

185 In United States District Court

[Title omited.]

Motion for leave to supplement motion to quash and order allowing same

Filed April 23, 1928

And now, April 23, 1928, comes the above named defendant by its attorneys, Dalzell, Fisher, and Dalzell, and respectfully moves the court for leave to supplement its motion to quash the indictment in the above entitled case by adding thereto the following additional reasons in support of said motion:

9. That there is no allegation in the indictment that defendant was the agent or employee of the carrier, and if the averments in the indictment that the defendant did certain things "for and on behalf of the carrier" and that the carrier "required the defendant to furnish a report in writing of the amount of ice placed in the bunkers of refrigerator cars" are designed to show that the defendant was an agent or employee of the carrier, such averments are mere conclusions of the pleader, because the indictment affirmatively shows that what the defendant did was done "in accordance with the terms of a certain contract executed on, to wit, May 1, 1925," and while acting "under the terms of the aforesaid contract," and said contract is not set out, nor is its substance stated, and the conclusions of the pleader on the meaning of its terms and on the relationship between defendant and the Pennsylvania Railroad created by it are insufficient in law as allegations of facts essential to support an allegation of agency or employment, and defendant specially objects thereto.

186 10. That counts 51-65, inclusive each charge the willful making by the defendant of a "false entry" in a freight bill issued by the common carrier to its customers, whereas the averments of the indictment affirmatively show that said freight bills were made up wholly by the carrier and that the defendant did not and could not have prepared them or made any entries therein, false or otherwise. The attempt is here made, contrary to law, to join the act of the carrier with the intention of the defendant in the statment of an offense without any allegation of conspiracy or community of purpose between the carrier and the defendant.

11. That counts 66-75, inclusive, each charge the defendant with willfully causing, procuring, aiding, and abetting the common carrier to make a false entry in a freight bill, but do not allege that the common carrier "willfully" made any "false entry" in said freight bill, and therefore do not allege the commission of any crime of which the defendant could be guilty of causing, procuring, aiding, or abetting its commission.

DALZELL, FISHER & DALZELL,
Attorneys for Defendant.

187 Order of court

And now, April 23, 1928, the foregoing motion having been presented in open court, upon consideration thereof the United States attorney having agreed thereto, leave is granted to the defendant to supplement its motion to quash the indictment in this case by adding thereto the foregoing additional reasons which are hereby ordered to be filed and made a part of the original motion to quash.

Per curiam.

S.

Service of copy of within accepted and consent given to filing hereof this 23rd day of April, 1928.

JOHN D. MEYER, *U. S. Attorney.*

[File indorsement omitted.]

188 IN UNITED STATES SUPREME COURT

[Title omitted.]

Opinion and order sustaining motion to quash

Filed May 5, 1928

THOMPSON, J.: This is a motion on the part of defendant to quash the indictment, consisting of seventy-five counts, drawn under section 20, paragraph 7, and section 10, paragraph 1, of the interstate commerce act, and section 332 of the Penal Code.

In order to determine whether the defendant is liable to the penal provision of the statutes referred to, a general statement of the situation, as disclosed by the indictment, is necessary. The facts are these:

The Pennsylvania Railroad Company is a common carrier engaged in interstate transportation, and subject to the provisions of the interstate commerce act. The railroad company has published and filed with the Interstate Commerce Commission schedules of tariffs for refrigeration charges upon goods transported by it. The defendant is a corporation under the laws of the State of Delaware, having an office in Pittsburgh, and is engaged, inter alia, in icing and reicing for the Pennsylvania Railroad Company the bunkers of refrigeration cars. The said icing and reicing service "was performed by said defendant for and on behalf of said railroad company under, and in accordance with, the terms of a certain contract by and between said defendant and said railroad company, executed on, to wit, May 1st, 1925."

At all times mentioned in the indictment the railroad company required the defendant to furnish a report in writing of the amount of ice placed in the bunkers of the refrigeration cars for the railroad, and the defendant did furnish and deliver to the rail-

road company reports in writing purporting to show the
189 amount of ice which it has furnished and placed in the bunkers of the said railroad cars. These reports were received and kept and accepted by the railroad company as correct reports of the amount of ice so placed in said cars; and these were the only reports and records from which the railroad company could prepare and render to the consignees of said shipments, and bills for ice placed in the bunkers of the cars and of the icing charges due the railroad from said consignees.

In counts from 1 to 50, inclusive, it is charged that the defendant "unlawfully or wilfully made and caused to be made a false entry in a record kept by a common carrier subject to said act to regulate commerce, as amended," each count specifying an offense. Counts 51 to 65 charge the defendant, "while acting as aforesaid under the terms of the aforesaid contract, unlawfully or wilfully made, and caused to be made, a false entry in a record kept by a common carrier, subject to said act to regulate commerce; that is to say, the defendant in a certain written freight bill, kept by the railroad company, designated and styled 'Freight Bill No ——,' did cause untrue charges for ice to be made by rendering to the railroad company false reports as to the quantities of ice placed in the bunkers of the cars, well knowing that the railroad company would have to use the data contained in said reports in making up its accounts, as required by the act for the regulation of commerce."

The substance of counts 66 to 75 charge that the railroad company, relying upon the truth of such statements and representations in the report furnished to the company, did make, and cause to be made, a false entry in a record kept by the railroad company in a certain written freight bill inaccurate or untrue charges for ice.

The defendant, in the indictment, is described as a contractor performing its duties under contract. It is not averred that it is a common carrier, nor that it acted as an officer, agent, or employe of a common carrier. The Pennsylvania Railroad Company has not been joined in the indictment, nor is there any allegation of collusion between said company and the defendant. Nor does
190 the indictment charge that any false entry was wilfully or knowingly made by the common carrier, its officers, directors, agents, or employes in any record required by the law to be kept.

From this state of facts, the following legal conclusions may be drawn:

First. The statutes under which the indictment is drawn, are highly penal. They must, therefore, be construed strictly. No strained or unusual meaning should be applied to words and phrases, whose meaning is well known and easily understood.

Second. There is no allegation that defendant is a common carrier, and the interstate commerce act, on which the indictment is based, applies only to common carriers. (Berwind-White Coal Co. vs. U. S., 9 Fed. 2nd 429; Ellis vs. Interstate Commerce Commission,

237 U. S. 437; Chicago Refrigerator Company vs. Interstate Commerce Commission, 265 U. S. 292.)

Third. A noncarrier corporation acting as an individual contractor is not chargeable with a criminal offense under the interstate commerce act, as amended, for furnishing to a common carrier false data from which the carrier's accounts are made, without averment and proof of collusion between the common carrier and the noncarrier corporation with respect thereto. Under the requirements of the law and the conceded relationship between the carrier and the defendant, the data furnished to the railroad company, from which it was to perform its legal obligation, can not be legally construed as a common-carrier record. The Interstate Commerce Commission had no power over such records, the methods under which they were kept, or over the defendant itself. While counts 1 to 50 charge the defendant with making false entries in records kept by a common carrier, the averments of fact affirmatively show that the false entries were made in the records kept—that is, made up by the defendant.

Fourth. While counts 51 to 65 charge the defendant with making false entries in freight bills issued by the common carrier to its customers, the averments of fact affirmatively show that said bills were made up by a common carrier from records kept by it as required by law.

191 Fifth. While counts 66 to 75 charge the defendant with having procured the making of false entries in freight bills, the averments of fact show that said bills were made up in good faith by the railroad company from its own records, kept by it as required by law, and the regulations of the Interstate Commerce Commission.

Sixth. As the indictment nowhere charges that any false entry was wilfully or knowingly made by the common carrier, its officers, directors, agents, or employes, in any record required to be kept by law, there is thus disclosed no principle amenable under the provisions of the interstate commerce act, and therefore no offense which the defendant could aid or abet under section 332 of the Penal Code.

Seventh. In the indictment the word "agent" as applied to the defendant nowhere appears, it being referred to throughout as acting under contract, and therefore a contractor. The defendant was a common carrier corporation performing under contract certain functions for which it was incorporated and which were recognized by law; the data furnished by it could not be, therefore, construed as accounts kept by the carrier in accordance with the interstate commerce act. The defendant was not subject to the supervision nor under the jurisdiction of the Interstate Commerce Commission, and the reports or accounts furnished by it to the carrier were not subject to the provisions of that act.

The indictment can not be sustained and the motion to quash is granted.

Order

And now, to wit, May 5th, 1928, after argument by counsel and full consideration, the defendant's motion to quash the indictment is sustained, and the indictment is quashed. I am authorized to state that Judge Schoonmaker, who sat during the argument, concurs in this conclusion.

W. H. S. THOMSON.

To which action of the court counsel for the Government except and on their motion exception allowed and bill sealed.

W. H. S. THOMSON.

[File indorsement omitted.]

192 In United States District Court

[Title omitted.]

Assignments of error

Filed May 26, 1928

United States of America, plaintiff, by its counsel, now comes and, in connection with its petition for an appeal, files the following assignments of error on which it will rely on its appeal to the Supreme Court of the United States from the final judgment of the District Court entered May 5, 1928:

The District Court erred—

1. In sustaining the motion to quash the indictment.
2. In not overruling the motion to quash the indictment.
3. In quashing the indictment.
4. In not sustaining the indictment.
5. In holding and adjudging that the facts alleged in counts 1 to 50, inclusive, of the indictment, do not constitute an offense by the defendant.
6. In holding and adjudging that the facts alleged in counts 51 to 65, inclusive, of the indictment, do not constitute an offense by the defendant.
7. In holding and adjudging that the facts alleged in counts 66 to 75, inclusive, of the indictment, do not constitute an offense by the defendant.
8. In holding and adjudging that the statutes under which the indictment is drawn must be construed strictly.
9. In holding and adjudging that "the interstate commerce act, on which the indictment is based, applies only to common carriers."
10. In not holding and adjudging that the defendant is amenable to the provisions of section 20 (7) of the interstate commerce act, invoked in counts 1 to 50, inclusive, of the indictment, under the circumstances and upon the facts set forth and alleged in said counts.

193 11. In deciding and holding that "a noncarrier corporation acting as an individual contractor is not chargeable with a criminal offense under the interstate commerce act, as amended, for furnishing to a common carrier false data from which the carrier's accounts are made, without averment and proof of collusion between the common carrier and the noncarrier corporation with respect thereto."

12. In deciding and holding that "under the requirements of the law and the conceded relationship between the carrier and the defendant, the data furnished to the railroad company, from which it was to perform its legal obligation, can not be legally construed as a common-carrier record. * * * While counts 1 to 50 charge the defendant with making false entries in records kept by a common carrier, the averments of fact affirmatively show that the false entries were made in the records kept; that is, made up by the defendant."

13. In deciding and holding that the Interstate Commerce Commission had no power over the records described in counts 1 to 50, inclusive, of the indictment and alleged to have been falsified by defendant.

14. In not deciding and holding that the records described in counts 1 to 50, inclusive, of the indictment, and alleged to have been falsified by defendant, were records "kept" by a common carrier.

15. In deciding and holding that the term "records kept by a common carrier" means records "made up" by the carrier.

16. In deciding and holding with respect to counts 51 to 65, inclusive, of the indictment that the defendant did not make false entries in the freight bills therein described, because said freight bills were "made up by a common carrier."

17. In deciding and holding that because the freight bills described in counts 66 to 75, inclusive, of the indictment were "made up in good faith by the railroad company from its own records, kept by it as required by law," defendant did not procure the making of false entries in said freight bills.

194 18. In deciding and holding as follows: "As the indictment nowhere charges that any false entry was wilfully or knowingly made by the common carrier, its officers, directors, agents, or employes, in any record required to be kept by law, there is thus disclosed no principal amenable under the provisions of the interstate commerce act, and, therefore, no offense which the defendant could aid or abet under section 332 of the Penal Code."

19. In deciding and holding that the records made out and furnished by defendant to the common carrier could not be construed as records "kept by the carrier in accordance with the interstate commerce act."

20. In deciding and holding that the reports and accounts furnished by defendant to the carrier were not subject to the provisions of the interstate commerce act.

21. In not deciding and holding that the defendant, under the facts alleged in counts 1 to 65, inclusive, of the indictment, was an agent or person acting for or employed by a common carrier subject to the interstate commerce act, and amenable to the provisions of section 10 (1) of said act.

22. In entering the order sustaining the motion to quash the indictment.

Wherefore United States of America prays that the final judgment in the District Court entered May 5, 1928, sustaining the motion to quash the indictment be reversed, annulled, and set aside, and for such other and further order as may be appropriate.

JOHN D. MEYER,
United States Attorney.

Dated this 26th day of May, 1928.
[File indorsement omitted.]

195-196 [Citation in usual form showing service on Dalzell, Fisher & Dalzell, filed May 26, 1928, omitted in printing.]

197 In United States District Court

[Title omitted.]

Petition for appeal

Filed May 26, 1928

United States of America, plaintiff, by its counsel, now comes and says that on or about May 5, 1928, this court filed its opinion and entered its judgment in favor of the defendant against the plaintiff, in which judgment and proceedings had prior thereto in said cause certain errors were committed to the prejudice of the plaintiff, all of which will more fully appear from the assignment of errors herewith filed.

Wherefore United States of America prays that an appeal may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States, in accordance with the provisions of the act of Congress approved March 2, 1907 (34 Stat. 1246).

JOHN D. MEYER,
United States Attorney.

Dated this 26th day of May, 1928.
[File indorsement omitted.]

198 In United States District Court

[Title omitted.]

Order allowing appeal

Filed May 26, 1928

United States of America, plaintiff, having by its counsel made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of the District Court entered May 5, 1928, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided;

It is ordered and adjudged that the appeal be and the same is hereby allowed as prayed and made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said final judgment was made and entered to the Supreme Court of the United States.

F. P. SCHOONMAKER,
United States District Judge.

Dated May 26, 1928.
[File indorsement omitted.]

199 In United States District Court

[Title omitted.]

Stipulation re transcript of record

Filed May 29, 1928

It is hereby stipulated and agreed by and between John D. Meyer, United States Attorney for the Western District of Pennsylvania, attorney for plaintiff, and Dalzell, Fisher & Dalzell, attorneys for the Fruit Growers Express Company, defendant, that the following be printed as and constitute the record on appeal in the above case before the Supreme Court of the United States:

1. Indictment.
2. Motion to quash the indictment.
3. Supplemental motion to quash the indictment.
4. Opinion of the court quashing the indictment.
5. Order on opinion quashing the indictment.
6. Assignments of error.
7. Petition for appeal.
8. Order allowing appeal.

9. This stipulation.
10. Clerk's certificate.

JOHN D. MEYER,
United States Attorney.
DALZELL, FISHER & DALZELL,
Attorneys for Defendant.

Dated May 28th, 1928.
[File indorsement omitted.]

199 In United States District Court

[Title omitted.]

Order extending return day upon appeal

June 25, 1928

Now, to wit, this 25th day of June, A. D. 1928, it appearing to the court that on May 28, 1928, an order was made allowing an appeal to the Supreme Court of the United States in the above-entitled case returnable thirty days from the date thereof, and it further appearing that the plaintiff can not prepare and bring up the record to the Supreme Court within that time, on a motion of John D. Meyer, United States attorney, it is ordered that the return day be and the same is hereby extended, from June 25, 1928, to July 25, 1928.

Per curiam.

S.

201 [Clerk's certificate to foregoing transcript omitted in printing.]

202 In Supreme Court of the United States

Statement of points upon which the appellant intends to rely and designation to print entire record

Filed Aug. 8, 1928

The appellant contends that in sustaining the motion to quash the indictment the District Court erred in the particulars pointed out in the assignments of error, and, in support of that contention, appellant intends to rely upon the following points:

1. Refrigeration or icing of interstate shipments is a transportation service, and by performing that service appellee, though not a carrier, subjected itself to the statutes regulating the transportation of property in interstate commerce.

2. Section 20 (7) of the interstate commerce act is not limited to carriers and their employees, but includes all persons and corporations who do the forbidden thing, for that section declares that any

person who shall willfully make any false entry in any record or memoranda kept by a carrier shall be deemed guilty of a misdemeanor.

203 3. The misdemeanor consists of making a false entry by any person in any record kept by a carrier, and it is immaterial who writes, compiles, or makes up the record.

4. The words "any record or memoranda kept by a carrier" includes all records retained or preserved by a carrier, and particularly those required by the Interstate Commerce Commission to be kept; those words can not be so narrowly construed as including only records and memoranda written or "made up" by a carrier or its employees.

5. By making false entries in the icing reports, which were copied in good faith by the carrier in writing its freight bills (also required to be kept), appellee, by that means and device, falsified the carrier's freight bills described in counts 51 to 65, inclusive, of the indictment.

6. Counts 51 to 65, inclusive, which charge appellee, as a principal, with offenses of making, and causing to be made, false entries in the freight bills described in those counts are not invalid for failure to charge that the carrier itself committed the offense of making false entries, because section 332 of the Criminal Code (R. S. sec. 5323, 5427) provides that whoever commits an act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal and may be dealt with as such.

7. By virtue of the provisions of section 332, Criminal Code, counts 66 to 75, which charge appellee, as a principal, with offenses of causing, procuring, aiding, and abetting a carrier to make false entries in the freight bills described in those counts, are not invalid for failure to charge that the carrier itself committed the offense of making false entries.

204 8. In performing the icing service appellee was acting for and employed by the carrier within the meaning of section 10 (1) of the interstate commerce act; therefore, counts 66 to 75, which charge appellee with aiding and abetting the making of false entries, are valid counts under that section.

9. The indictment is not invalid for failure to allege collusion between appellee and the carrier, for collusion or conspiracy between the person or corporation making a false entry in a record and the carrier who is required to keep such record is not an element of the misdemeanor defined by section 20 (7).

10. Under section 332 of the Criminal Code it is not necessary, in the indictment of one who aids, abets, or procures the commission of a crime, to charge that the person or corporation so aided or abetted, also committed the crime.

11. The interstate commerce act is remedial and must be so construed as to accomplish the purposes for which it was enacted.

The appellant thinks that the entire record as filed will be necessary for the consideration of the points enumerated above.

WILLIAM D. MITCHELL,
Solicitor General.

AUGUST 6, 1928.

Service of a copy of the foregoing statement of points is hereby acknowledged this 7th day of August, 1928.

DALZELL, FISHER & DALZELL,
Attorneys for Appellee.

305 [File indorsement omitted.]

[Indorsement on cover:] File No. 33,614. W. Penna. D. C. U. S. Term No. 305. The United States of America, appellant, vs. Fruit Growers Express Company. Filed July 24th, 1928. File No. 33,614.

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of the Interstate Commerce Commission, and were made the basis of icing charges rendered by the railroad company in its freight or expense bills to the shippers. The railroad company was innocent. The question is whether the appellee is punishable under Section 20 (7) of the Interstate Commerce Act as a person who willfully makes a false entry in a record kept by a carrier.

The broad question is whether private persons and corporations acting for common carriers in performing an interstate transportation service which is subject to that Act thereby become amenable to the provisions of the Act and subject to punishment thereunder.

THE STATUTE

Section 20 (7) of the Interstate Commerce Act (c. 3591, 34 Stat. 584, 594, as amended by c. 193, 35 Stat. 648; U. S. C. Title 49, Sec. 20 (7)), which the indictment invokes, is as follows:

> (7) Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or ap-

proved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment; Provided, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Section 10 (1) of that Act (U. S. C. Title 49, Sec. 10 (1)) provides:

(1) That any common carrier subject to the provisions of this Act or, whenever such common carrier is a corporation, *any* director or officer thereof, or any receiver, trustee, lessee, agent, *or person acting for or employed by such corporation, who, alone* or with any other corporation, company, person, or party, *shall willfully do or cause to be done*, or shall willingly suffer or permit to be done, *any act, matter or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein*, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or

abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, *shall be deemed guilty of a misdemeanor* * * *. [Italics supplied.]

STATEMENT

At the November Term, 1927, the Grand Jury for the Western District of Pennsylvania returned an indictment in seventy-five counts against the appellee, charging the making of false entries in records kept by a railroad common carrier, and the aiding, abetting, and procuring such false entries to be made by the carrier, in violation of Section 20 (7) of the Interstate Commerce Act. A motion to quash the indictment was sustained, and judgment entered accordingly on May 5, 1928, from which this appeal was prosecuted on May 26, 1928, direct from the District Court under the Act of March 2, 1907, c. 2564, 34 Stat. 1246; U. S. C. Title 18, Sec. 682.

Appellee is a Delaware corporation, with an office and place of business at Pittsburgh, Pennsylvania. The Pennsylvania Railroad Company, by its tariffs and schedules duly published and filed with the Interstate Commerce Commission, offered and held itself out to perform for shippers of perishable commodities the service of refrigeration or icing of cars containing such commodities, at and for the rates and charges named in such schedules. By contract executed by them on May 1, 1925, the appellee undertook and agreed to perform for and on behalf

of the Railroad Company the refrigeration service described in those schedules, and, pursuant to the contract, performed that service in connection with the interstate shipments described in the several counts of the indictment, and rendered to the Railroad Company a report purporting to show the quantity of ice placed in the bunkers of each car. These reports were written by the appellee and are designated "Fruit Growers Express Company Form AD-54." The reports, according to the facts alleged in the indictment, were willfully falsified by appellee to the extent that it willfully wrote therein false figures concerning the quantity of ice which it had placed in the bunkers of the cars, instead of stating the correct quantity.

The icing or refrigeration reports written and furnished by the Express Company to the Railroad Company were placed by the latter in its files and, pursuant to an order of the Interstate Commerce Commission issued under Section 20 (7) of the Interstate Commerce Act, are kept and preserved in its files for a period of three years.

These reports were accepted by the Railroad Company as stating the true and correct quantity of ice placed in the cars, and from them the Railroad Company copied into its freight bills the false statements of the quantity of ice represented as having been furnished, resulting in the collection of an improper and incorrect charge from the consignee of the shipment.

The charge in counts 1 to 50, inclusive, of the indictment, is that the appellee made false entries in certain records, namely, the icing reports, kept by the Railroad Company.

Counts 51 to 65, inclusive, charge that by falsifying the icing reports appellee made and caused to be made false entries in freight bills kept by the Railroad Company.

The Government does not urge counts 66 to 75, inclusive, charging that appellee aided, abetted, and procured the making of false entries in the freight bills, and submits no argument in support of the validity of those counts.

Each count of the indictment involves a separate carload shipment of a perishable commodity, and the falsification by appellee of a record kept by the Railroad Company concerning the quantity of ice placed by appellee in the bunkers of the car.

The allegations of counts 1 (R. 1) and 51 (R. 43), only are described herein, inasmuch as those two counts, respectively, are typical of the two groups of counts here involved.

Count 1

After alleging that the Railroad Company is a common carrier, subject to the Interstate Commerce Act, Count 1 alleges in paragraph 2 that the Railroad Company published and filed with the Interstate Commerce Commission schedules and tariffs of refrigerator rates and charges which provided, among other things, (a) that bunkers of

refrigerator cars containing perishable commodities and transported by it for delivery at Pittsburgh, Pennsylvania, would be inspected each day from time of arrival until the consignee began unloading the cars; and (b) that when required, additional ice sufficient to fill the bunkers would be placed therein at the rate and charge to the consignee of $4.00 for each ton of 2,000 pounds, except that when the bunkers were less than three-fourths full of ice upon arrival at Pittsburgh, the bunkers would then be iced to capacity without charge for the arrival icing, and (c) that the arrival icing charge of $4.00 per ton was exclusive of and in addition to the rates charged for the transportation of such perishable commodities.

Paragraph 3 alleges that the appellee is a Delaware corporation engaged, among other things, in inspecting, icing, and reicing refrigerator cars containing shipments of perishable commodities transported by the Railroad Company for delivery at Pittsburgh, that service being performed by appellee for and on behalf of the Railroad Company pursuant to the terms of a contract executed by them on May 1, 1925, whereby the appellee agreed to perform the inspection and icing service which the Railroad Company, by and through the means of its published schedules and tariffs agreed and undertook to perform in connection with such shipments.

Paragraph 4 alleges that the appellee, as required by the Railroad Company, made and furnished

written reports of the quantity of ice placed by it in the bunkers of the cars for and on behalf of the Railroad Company at Pittsburgh, which reports were received and kept by the Railroad Company as the true and correct reports of the quantity of ice so furnished; and that those were the only reports and records from which the Railroad Company could prepare and render to consignees of shipments at Pittsburgh statements and bills for ice furnished in accordance with its published tariffs and schedules.

Paragraph 5 refers to a specific carload shipment transported by the Railroad Company to Pittsburgh and alleges that the appellee, after having knowingly placed only 1,800 pounds of ice in that car, willfully and falsely stated in the report that it had placed 2,800 pounds of ice in the car, and delivered the report to the Railroad Company with the intent that it should accept such false weight shown therein as the correct weight of the ice placed in the car.

Count 51

This count incorporates by reference the first four paragraphs of count 1 and alleges that the appellee acting pursuant to the terms of the contract mentioned above, willfully made and caused to be made a false entry in a freight bill kept by the Railroad Company, by the device and means of falsely stating in the written icing report that it had placed 3,000 pounds of ice in a car when it had

placed only 1,000 pounds in the car, well knowing that the Railroad Company would, as was its established custom, accept and rely upon the icing report as containing a true and accurate statement of the quantity of ice placed in the car, and would render its freight bill based upon the information set forth in the report.

SPECIFICATION OF ERRORS

The District Court erred:

I. In holding and adjudging that "the Interstate Commerce Act, on which the indictment is based, applies only to common carriers," and that, therefore, appellee, a noncarrier corporation, is not chargeable with a criminal offense under that Act "for furnishing to a common carrier false data from which the carrier's accounts are made, without averment and proof of collusion between the common carrier and the noncarrier corporation with respect thereto."

II. In deciding and holding that the term "records kept by a common carrier," as used in the statute, means records written or "made up" by the carrier, and that, therefore, the icing reports described in counts 1 to 50, inclusive, made up and written by the appellee and furnished by it to the Railroad Company could not be construed as records "kept by the carrier in accordance with the Interstate Commerce Act."

III. In holding that because the Railroad Company actually wrote the falsified freight bills, though relying upon the truth of the appellee's

entries in the icing reports, the appellee is not indictable for making and causing to be made false entries in the freight bills described in counts 51 to 65, inclusive.

IV. In sustaining the motion to quash the indictment.

SUMMARY OF ARGUMENT

1. Refrigeration or icing of interstate shipments is a transportation service, which, by Section 1 of the Interstate Commerce Act, is made subject thereto, and by performing that service appellee, though not a common carrier, subjected itself to the statutes regulating and protecting the service.

2. Section 20 (7) of the Act condemns and punishes "any person" who makes false entries in any record kept by a common carrier; hence the District Court erred in holding that it applies only to common carriers and their officers, agents and employees. The statute was intended to cover a person acting for the carrier, whether as an employee *or* as a contractor, and this is shown by Section 10 (1), which includes persons acting for as well as those employed by carriers.

3. The falsified icing reports described in counts 1 to 50 are records "kept" by the Railroad Company within the meaning of Section 20 (7) and preserved in its files for three years in compliance with the order of the Interstate Commerce Commission. It is immaterial that the appellee, and not the Railroad Company, wrote the records so kept, and the District Court erred in holding to the contrary.

4. Through the device and means of making false entries in the icing reports, which were accepted in good faith and relied upon by the Railroad Company in writing its freight bills, the appellee falsified the freight bills described in counts 51 to 65, inclusive, within the meaning of Section 20 (7). We concede that the position of the United States in these counts is weaker than in Counts 1 to 50, wherein appellee itself actually wrote the false icing reports, whereas the freight bills based upon the false icing reports were written by the Railroad Company.

5. Collusion between the carrier and "any person" who makes a false entry in any record kept by the carrier is not an element of the misdemeanor created by Section 20 (7); therefore, the District Court erred in holding that the appellee was not indictable for furnishing the false icing reports to the Railroad Company without averment and proof of collusion between them.

ARGUMENT

I

REFRIGERATION IS A TRANSPORTATION SERVICE REGULATED BY THE INTERSTATE COMMERCE ACT, AND IN PERFORMING THAT SERVICE APPELLEE WAS A PERSON EMPLOYED BY AND ACTING FOR THE RAILROAD COMPANY; AS SUCH IT WAS BOUND TO OBSERVE THE STATUTES REGULATING THE SERVICE

It is not contended by the Government that appellee is a common carrier subject to the Interstate Commerce Act. *Chicago Refrigeration Co.* v. *Interstate Commerce Commission*, 265 U. S. 292.

However, by the provisions of Section 1, paragraphs (3) and (4) of that Act, refrigeration or icing of cars containing shipments of commodities transported in interstate commerce is a transportation service which common carriers are under duty to provide and furnish upon reasonable request.

Paragraphs (3) and (4) of that Section provide (41 Stat. 474):

> (3) * * * The term "transportation" as used in this Act shall include * * * all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the * * * refrigeration or icing * * * of property transported. * * *
>
> (4) It shall be the duty of every common carrier subject to this act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor. * * *

In *Atchison Railway Co.* v. *United States*, 232 U. S. 199, this Court said at page 215 (quoting from 20 I. C. C. 116):

> It is the duty of the carrier to furnish refrigeration upon reasonable demand.

That service being itself a transportation service which the common carrier is under statutory duty to peform, and brought specifically within the statutes regulating transportation in interstate commerce, it follows that those who perform the service of necessity subject themselves to the statutes

which regulate the service. The fact that the Railroad Company did not perform the refrigeration service does not remove the service from the jurisdiction of the statutes.

In *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, this Court, in holding that the elevation of grain in course of interstate movement was a transportation service, recognized the right of a carrier to employ another person or corporation to perform the service. At page 47 it said:

> As the carrier is required to furnish this part of the transportation upon request he could not be required to do it at his own expense, and there is nothing to prevent his hiring the instrumentality instead of owning it.

Congress has regulated *commerce;* it has regulated transportation because it is commerce; and its regulations bind those who perform interstate transportation services because they are engaged in commerce. Obviously, the very purpose of the legislative body to regulate commerce would be defeated if the regulatory statutes had no application to those engaged in commerce. The appellee apparently claims the privilege of acting for carriers in performing a transportation service upon an interstate shipment which is regulated by the Interstate Commerce Act, receive its compensation therefor from the carriers, and yet be not bound by or subject to the regulations which govern and protect the interstate shipment. This it can not do. *Munn* v. *Illinois*, 94 U. S. 113.

In *Spencer Kellogg & Sons* v. *United States*, 20 F (2d), 459 (certiorari denied, 275 U. S. 566), the Circuit Court of Appeals, Second Circuit, held that a private corporation which elevated grain in course of interstate transportation for a common carrier pursuant to previous arrangements or agreements violated the Elkins Act in refunding to shippers a portion of the elevation allowance. In holding that the elevator company was subject to that Act the Court said, at page 461:

> Congress has the power, under the Constitution, to regulate interstate commerce, and therefore the action of persons who are engaged in it because of that fact. *Gibbons* v. *Ogden*, 9 Wheat. 1, 76. Agents or persons acting for a carrier are bound by these regulations. *New York Central Railroad* v. *United States*, 212 U. S. 481.

II

SECTION 20 (7) OF THE INTERSTATE COMMERCE ACT IS NOT LIMITED TO COMMON CARRIERS AND THEIR EMPLOYEES, BUT INCLUDES AND PUNISHES ALL PERSONS AND CORPORATIONS WHO COMMIT THE ACT THEREIN DECLARED TO BE UNLAWFUL

It seems clear that by using the words "any person" [1] this section was not designed to restrain or

[1] The word "person" in Federal legislation includes corporations. *United States* v. *First National Bank of Anamoose*, 190 Fed. 336, 346; *Union Pacific Coal Co.* v. *United States*, 173 Fed. 737, 739; *Dressel* v. *North State Lumber Co.*, 107 Fed. 255, 256; *United States* v. *Union Supply Co.*, 215 U. S. 50, 54; *United States* v. *Amedy*, 11 Wheat. 392, 412.

punish merely common carriers and their office employees who might make false entries in records kept by the carrier, but that it was the legislative intent to make it unlawful (1) to make a false entry in such records and (2) to provide punishment for everyone who committed the unlawful offense. If Congress had intended, as was held by the District Court, that this section apply only to common carriers and their directors, officers, agents, or employees, then apparently such persons would have been specifically named, as in other sections of the Act. See Secs. 15 (11), 16 (8), and 20a (11).

Similar words appear in Section 1 of the Elkins Act (c. 708, 32 Stat. 847; c. 3591, 34 Stat. 584, 588; U. S. C. Title 49, § 41), wherein it is declared that "it shall be unlawful for any person, persons, or corporation" to give or receive a rebate, etc., and in the penal clause, that "every person or corporation, whether carrier or shipper," who shall give or receive a rebate shall be deemed guilty of a misdemeanor. In *Spencer Kellogg & Sons* v. *United States*, *supra*, the Circuit Court of Appeals held that the words "any person" and "every person" included *all persons* whose intended acts resulted in the thing forbidden by that Act, and that those words were not to be restricted in their application even by the words "whether carrier or shipper" used in the penalty provision. At page 461 the court said:

> The act concerns itself with preventing concessions and rebates with respect to inter-

> state transportation of property, and not with carriers, shippers, their agents, or anyone else, unless and until their acts result in the accomplishment of that which the statute forbids. It was not intended and does not permit anyone else, other than shippers and carriers, to grant rebates or concessions.

Section 10 (1) of the Interstate Commerce Act throws light on the legislative intention. That section provides punishment for all conduct prohibited by the Act for which no penalty is otherwise provided, and since a penalty is otherwise provided in Section 20 (7), Section 10 (1) has no direct application here, but its words show that Congress intended by the Act to punish those acting for common carriers, although the relation of master and servant does not exist, for, after covering the cases of officers and servants, it includes a " person acting for *or* employed by such corporation."

Any construction of Section 20 (7) which attempts to limit or restrict its application exclusively to common carriers and their immediate officers and agents overlooks both the letter and the purpose of that statute.

In *United States* v. *Tippitt*, 298 Fed. 495, the District Court at page 500, said of this section:

> The statute is highly penal, and, while *the evident purpose of the entire legislation was to preserve every record, so that an inspection thereof could be made at any time that the supervising body might think proper*, yet a court is not warranted in placing a

> strained, unusual or unknown meaning upon well-known and easily understood words and phrases. (Italics supplied.)

The purposes of Section 20 of the Act fully appear from this Court's decision in *Int. Com. Comm.* v. *Goodrich Transit Co.*, 224 U. S. 194, in which the authority of the Interstate Commerce Commission under that section to prescribe and require the keeping of a uniform system of accounts by common carriers was upheld. At pages 211 and 213, respectively, the Court said:

> We think this section contains ample authority for the Commission to require a system of accounting as provided in its orders and a report in the form shown to have been required by the order of the Commission. It is true that the accounts required to be kept are general in their nature and embrace business other than such as is necessary to the discharge of the duties required in carrying passengers and freight in interstate commerce by joint arrangement between the railroad and the water carrier, but the Commission is charged under the law with the supervision of such rates as to their reasonableness and with the general duty of making reports to Congress which might require a knowledge of the business of the carrier beyond that which is strictly of the character mentioned. If the Commission is to successfully perform its duties in respect to reasonable rates, undue discriminations and favoritism, it must be informed as to the business of the carriers by a system of ac-

counting which will not permit the possible concealment of forbidden practices in accounts which it is not permitted to see and concerning which it can require no information. It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in their accounts, is a regulation of business not within the jurisdiction of the Commission, as seems to be argued for the complainants. The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction. Further, the requiring of information concerning a business is not regulation of that business.

* * * * *

We think the act should be given a practical construction, and one which will enable the Commission to perform the duties required of it by Congress, and, conceding for this purpose that the regulating power of the Commission is limited so far as rates are concerned to joint rates of the character named in § 1, it is still essential that to enable the Commission to perform its required duties, even with respect to such rates, and to make reports to Congress of the business of carriers subject to the terms of the act, it

should be informed as to the matters contained in the report. Congress, in § 20, has authorized the Commission to inquire as to the business which the carrier does and to require the keeping of uniform accounts, in order that the Commission may know just how the business is carried on, with a view to regulating that which is confessedly within its power.

That a person who is not an employee of the carrier who keeps the record is chargeable with the offense created by Section 20 (7) is the holding of the Circuit Court of Appeals, 4th Circuit, in *Kennedy* v. *United States*, 275 Fed. 182. Kennedy was convicted upon an indictment brought under that section charging (a) wilfully making false entries; (b) wilfully neglecting and failing to make full, true and correct entries, and (c) wilfully altering and falsifying records kept by an interstate carrier. The charge of wilfully neglecting and failing to make full, true and correct entries involved records kept by the Charleston Terminal Company, a common carrier, while Kennedy was an employee of the Southern Railway Company, which delivered carloads of hay and corn to the Terminal Company for switching to side tracks of consignees. Kennedy's duty was to issue directions as to the disposition of cars and in that connection to send a "manifest" or memorandum to the Terminal Company indicating whether a car was billed "straight" or "order notify," i. e., whether the car was to be delivered to the consignee at once or only

upon presentation of the bill of lading. He wilfully failed and neglected to state on the manifest that certain cars were billed "order notify." The original of the manifest was transmitted to the Terminal Company and by it kept in its files. This, the court held, constituted the wilful neglect and failure to make true and correct entries in a record kept by the Terminal Company. At page 185 the court said:

> The bill of lading and the record book in the defendant's office showed that the shipments were order notify. The charge in the seventh count and the proof was that car No. 28736 was consigned order notify, and was so entered on the waybill and on the car book kept by Kennedy. In the memorandum or manifest sent by Kennedy officially to the terminal company to indicate the car and whether it was free or order notify, and to control the terminal company in handling the car, he deliberately and intentionally omitted the words "order notify." This was beyond all dispute willful neglect and failure to make a full, true, and correct entry of facts appertaining to the carrier's business of handling the shipment. Hence in any view of the law and the facts there was no possible escape from conviction on the seventh count, and conviction on that alone would support the sentence.

It was also held that Kennedy's acts constituted a further violation of Section 20 (7), for the reason that carbon copies of the incorrect and incomplete

manifests were kept by the Southern Railway. On this point the court said, at pages 185–186:

> There is, however, no ground for the contention that the memoranda or manifests kept by Kennedy when he sent the originals to the terminal company were not records or memoranda of the carrier. On the contrary, we think on Kennedy's own testimony the District Judge was right in charging the jury that they were records of the carrier. He testified that they were not included in any inspection, that they remained in his possession, and that he destroyed them when he saw fit. But he also testified that they were devised by him as car clerk as a part of "the system" of his office, for his information and convenience in the transaction of the carrier's business. He did not deny the testimony of the government witnesses that these manifests or memoranda were actually found among the records of the Southern Railway's freight office. There was also uncontradicted testimony that they were usually kept, and that they were essential as copies of the originals sent to the terminal company. Indeed, it is evident these copies were essential memoranda for the use of the railway company as checks on the terminal company. When, therefore, the defendant willfully omitted the notation "order notify" on the original sent the terminal company and entered it on the purported copy retained, and entered on the original "One car B. L. surrendered up here chgs. paid," or the words "B. L. up here," and omitted them

> from the purported copies retained, he willfully made false entries, and willfully neglected to make full, true, and correct entries of facts appertaining to the business of the carrier in records kept by the carrier.

III

THE FALSIFIED ICING REPORTS DESCRIBED IN COUNTS 1 TO 50 ARE RECORDS "KEPT" BY THE RAILROAD COMPANY WITHIN THE MEANING OF SECTION 20 (7), AND PRESERVED IN ITS FILES FOR THREE YEARS, IN COMPLIANCE WITH THE ORDER OF THE INTERSTATE COMMERCE COMMISSION, AND IT IS IMMATERIAL WHETHER THE RAILROAD COMPANY COMPILED OR WROTE THE RECORDS SO KEPT

The District Court held that (R. 80):

> While Counts 1 to 50 charge the defendant with making false entries in records kept by a common carrier, the averments of fact affirmatively show that the false entries were made in the records kept—that is, made up by the defendant.

Thus, the court holds that records *kept*, within the meaning of that section, are records written or "made up" by the carrier. This interpretation ignores not only the purpose of that section but also the ordinary meaning of the word "kept." According to Webster's New International Dictionary "kept" is the past participle of the word "keep," which is there defined, "to preserve or maintain." The definition of the word "keep" as shown in Funk & Wagnalls' New Standard Dictionary is, "to have and retain in one's control or possession."

That the term "any record or memorandum kept by a carrier," as used in Section 20 (7) does not mean a record written or made up by the carrier readily appears when consideration is given to the purpose for which that section was enacted.

In *United States* v. *Tippitt, supra,* the court stated that *the evident purpose of that section was to preserve every record, so that an inspection thereof could be made at any time the Commission might think proper.* This statement of the purpose of that section is in harmony with the apparent interpretation of it by the Interstate Commerce Commission which, though not conclusive, is entitled to great weight.

> *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 244 U. S. 336.

For example, the Commission in its regulation of telegraph companies has issued its Conference Ruling No. 460 as follows:

> 460. TELEGRAMS AND CABLEGRAMS.—The practice by telegraph and cable companies of returning to patrons the *original telegrams or cablegrams* in support of their bills is unlawful. Such documents must be retained in conformity with the regulations of the Commission governing the destruction of records of telephone, telegraph, and cable companies. [Italics supplied.]

It is common knowledge that original telegrams and cablegrams are written by the persons who send them, and not by the telegraph or cable companies thus required to keep them.

By its order issued June 1, 1914, which, with excerpts, is printed in the Appendix hereto, the Commission requires that icing reports or records of cars iced and ventilated be kept by common carriers for a period of three years, and that records and reports of over-collection of freight and other charges, including icing charges, be maintained for a period of six years. The authority to issue such an order is granted the Commission in the proviso of Section 20 (7). Among the records which the Commission describes in that order and requires carriers to keep and preserve in their files for varying periods, are several records which, by the very nature of the transactions giving rise to the writing of those records, are not written by carriers. Such records include the following:

Description of records	Period to be retained
Consignors' shipping orders, consignors' shipping tickets * * *	6 years.
Instructions for delivery at consignees' stations	3 years.
Claim papers, all papers relating to overcharge, loss and damage, personal injury, fire, and other claims * * *	6 years after settlement or rejection.
Bids and offers for the sale or purchase of materials and supplies	3 years.
Orders from consignees for delivery of freight	6 years.
Orders for the reconsignment of freight	6 years.
Correspondence and records thereof relating to subjects listed * * *	For the period prescribed for the records to which the correspondence relates.

The interpretation of Section 20 (7) by the District Court is directly contrary to the decision of the Circuit Court of Appeals in *Kennedy* v. *United States, supra*, for there it was held that Kennedy, although an employee of the Southern Railway,

willfully failed and neglected to make true and correct entries in records kept by the Charleston Terminal Company, another common carrier. In other words, the court held that the manifests written by Kennedy and furnished to the Terminal Company were records "kept" by the latter within the meaning of Section 20 (7).

If the word "kept" as used in this section means and refers only to records written or made up by carriers and their office employees, it is obvious that the purpose of Section 20, to establish, maintain, and preserve a uniform and informative system of accounts, records, and memoranda in order that the Commission may, whenever necessity arises, inspect and investigate the transactions of carriers subject to the Act, can be completely thwarted by the railroads through the device of employing independent corporations to perform certain transportation services which the carriers are required to furnish. This case illustrates the means of defeating the purpose of the statute. That is to say, the Railroad Company is entitled to employ appellee to perform the icing service; the appellee, and it only, is in a position to make true reports of the quantity of ice used; the appellee itself is not a common carrier subject to the Act; therefore, it may, if the decision of the District Court is correct, falsify or destroy the icing records at its pleasure, since, as indeed the court held, the Commission has no control whatever over those records.

Under the District Court's decision, even the Railroad Company may destroy, mutilate, or falsify, at its pleasure, all records kept by it if written by other persons and corporations. That such view is untenable is obvious when applied to "shipping orders" written by shippers and kept by the carrier for six years. From the shipping order the carriers prepare the waybill covering the shipment, and collect the amount of freight charges due according to the description of the commodity as shown in the shipping order. In short, all records concerning the shipment relate back to the shipping order and depend upon it for accuracy.

IV

THROUGH THE DEVICE OF MAKING FALSE ENTRIES IN THE ICING REPORTS, WHICH WERE ACCEPTED IN GOOD FAITH AND RELIED UPON BY THE RAILROAD COMPANY IN WRITING ITS FREIGHT BILLS, APPELLEE FALSIFIED THE FREIGHT BILLS DESCRIBED IN COUNTS 51 TO 65, INCLUSIVE, WITHIN THE MEANING OF SECTION 20 (7).

This contention may not be so easily defended as that respecting the false icing reports, because the latter were actually made by the appellee, while the freight bills were made by the carrier.

In counts 51 to 65, inclusive, appellee is directly charged, as principal, with the falsification of freight bills (also known as "expense bills" for freight) written by the Railroad Company, the originals being submitted to consignees of the ship-

ments and copies thereof being kept by the Railroad Company in its files for six years. But the false statements therein written were copied from the false icing reports written by the appellee, and accepted and relied upon by the Railroad Company as containing true and correct statements of the quantity of ice furnished. It will be seen from the very nature of the arrangement between appellee and the Railroad Company that the appellee and the reports furnished by it constitute the only possible source from which the Railroad Company could obtain any information concerning the quantity of ice placed in the cars. This, the indictment charges, the appellee well knew, and further that the Railroad Company did accept, as it must, and rely upon the statements contained in the icing reports, and prepared and rendered its freight bills based upon that information. Consequently, it readily appears that the truth and accuracy of the freight bills, in so far as they pertained to icing charges, were wholly dependent upon and entirely within the control of appellee.

Section 20 (7) comprehends the falsification of records kept by a carrier through and by means of devices other than the simple method of the writing by such person of false entries directly into the freight bills. Indeed, it appears from the language of that section that Congress had in mind not only the simple and ordinary means by which such records could be falsified, but also *any* and *all* other

means which could be employed to accomplish the thing forbidden. The language is:

> Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, *or by any other means or device falsify* the record of any such account, record, or memoranda, * * *. (Italics supplied.)

This Court has frequently dealt with and construed the word "device" as used in the Elkins Act, and has as frequently held that it includes, condemns, and punishes every method to which persons and corporations have resorted to accomplish the result forbidden by that Act. For example, in *United States* v. *Koenig Coal Company*, 270 U. S. 512, it was held that a shipper could not escape punishment under that Act by resorting to the device of trickery and deceit to obtain concessions from a carrier which acted innocently and without knowledge that it granted the concession. In *Armour Packing Co.* v. *United States*, 209 U. S. 56, a case involving violations of the Elkins Act, the Court construed the word "device" to include the making of a private contract rate which was less than the published tariff rate for the transportation of property. At page 71 it is said:

> A device need not be necessarily fraudulent; the term includes anything which is a plan or contrivance. Webster defines it to be "that

> which is devised or formed by design; a contrivance; an invention; a project," etc.

In *Grand Rapids & Indiana Railway Co.* v. *United States*, 212 Fed. 577 (C. C. A. 6th Cir.), which involved rebates paid by a carrier in violation of the Elkins Act, the Court overruled the contention that there was a fatal variance between allegations of the indictment and the evidence, and said of the contention, at page 581:

> It also fails to give due effect to the comprehensive provision of the statute, which forbids employment of "any rebate, concession or discrimination," or of "any device whatever," respecting the transportation of property "at a less rate than that named in the tariffs published and filed by such carrier."

If the word "device," as used in the Elkins Act, includes any and every means by which the thing forbidden may be accomplished, we submit that the words of Section 20 (7), "or by any other means or device," must be similarly, if not identically, construed. Unless these words include the resort to any and all other methods of falsifying records kept by a carrier, in addition to the simple act of a person writing with his own hand a false entry in a record so kept, they must of necessity be read out of the statute.

The District Court apparently has overlooked the purpose of Section 20 (7) and the result which it aims to prevent. One of the purposes of the statute

is stated by the Circuit Court of Appeals in *Kennedy* v. *United States, supra,* p. 183, as follows:

> First, that all accounts, records, and memoranda of the carrier, whether prescribed by the Commission or not, should be true and correct.

Certainly that purpose can not be accomplished under the District Court's interpretation, for, as construed by it, the Railroad Company necessarily goes acquit, for it did not willfully make the false entries in the freight bills; the appellee also goes acquit because it did not write the freight bills, although with obvious willfulness and evil intent it did cause and procure, through trickery and deceit, the making of false entries in the freight bills. This incongruity results: The act described and made unlawful by the statute has been committed, and the prohibited result accomplished by the appellee; nevertheless, the statute has not been violated.

In *United States* v. *Koenig Coal Company, supra,* speaking of an indictment under the Elkins Act, this Court said, at page 519:

> It would be contrary, therefore, to the general intent of the law to restrain the effect of the language used so as not to include acts exactly described, when they clearly effect discrimination and inequality.

And in *Spencer Kellogg & Sons* v. *United States, supra,* the Circuit Court of Appeals, in overruling the contention that the payment of a rebate violated the Elkins Act only when made by or with the cooperation of a common carrier, said, at page 461:

> The test to be applied in determining whether the Act is violated is whether the terms of the statute include the acts committed. Whether the person committing the act is a shipper or carrier is not determinative. *United States* v. *Koenig Coal Co.*, 270 U. S. 512.

Section 20 (7), like the Elkins Act, is a prohibitory statute enacted to subserve a definite purpose and to accomplish a certain result, namely, the preservation by common carriers of true and correct records. Appellee, having committed the acts exactly described by that section, and having by that means accomplished the forbidden result, is clearly amenable to the punishment therein provided. There is no basis for the contention that it escapes merely because it has resorted to trickery and deceit.

V

THE INDICTMENT IS NOT INVALID FOR FAILURE TO ALLEGE COLLUSION BETWEEN APPELLEE AND THE RAILROAD COMPANY, FOR COLLUSION OR CONSPIRACY IS NOT AN ELEMENT OF THE CRIME DEFINED BY SECTION 20 (7)

The District Court has apparently reached the erroneous conclusion that the only method by which Section 20 (7) can be violated by any person, other than the carrier, is by such person re-

sorting to collusion with the carrier. It holds (R. 80) that—

> Third. A noncarrier corporation acting as an individual contractor is not chargeable with a criminal offense under the interstate commerce act, as amended, for furnishing to a common carrier false data from which the carrier's accounts are made, without averment and proof of collusion between the common carrier and the noncarrier corporation with respect thereto. * * *

That such conclusion is erroneous readily appears from a casual reading of the statute, which nowhere refers to collusion, conspiracy or joint action. On the contrary, it contemplates individual action, for it declares that *any person* who wilfully makes a false entry in a record kept by a carrier shall be deemed guilty of a misdemeanor. There is no question of collusion or joint action between appellee and the railroad company. The question is whether the acts of appellee are those described by the statute. In *United States* v. *Koenig Coal Co., supra*, this Court overruled the contention that the offense of receiving concessions, within the meaning of the Elkins Act, could not be committed without guilty knowledge and collusion of both the shipper and the carrier. At page 519, the Court stated that as practical men

the legislators knew that this was the way in which violations of the law were most likely to occur, and said:

> But this does not at all justify the conclusion that Congress in enacting the Elkins law intended to limit the offenses described in it to cases of collusion, if otherwise the acts charged came within the words of the statute.

A similar contention was overruled by the Circuit Court of Appeals in *Spencer Kellogg & Sons* v. *United States*, *supra*, with the statement, at page 461, that:

> Congress did not intend to limit the offense described in it [the Elkins Act] to cases of collusion between the carrier and the shipper. What was done by the plaintiff in error is not in dispute, and therefore the question is whether what was done constitutes an offense by this plaintiff in error, even though it were not established to have been done in collusion with a carrier or with its knowledge or consent. The law was intended to reach either individuals or corporate entities who contribute knowingly and understandingly to a rebate or concession by any manner or device, and the relation which the culprit bore to the carrier is not necessary as a foundation upon which to rest responsibility.

CONCLUSION

The judgment of the District Court should be reversed and the cause remanded with directions to overrule the motion to quash the indictment.

WILLIAM D. MITCHELL,
Solicitor General.
WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
WILLIAM H. BONNEVILLE,
WILLIAM J. FLOOD,
Special Assistants to the United States Attorney.

NOVEMBER, 1928.

APPENDIX

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE IN WASHINGTON, D. C., ON THE 1st DAY OF JUNE, A. D. 1914

The matter of the determination of the operating, accounting, and financial papers, records, books, blanks, tickets, stubs, and documents of steam roads which may, after a reasonable time, be destroyed being under consideration, the following order was entered:

It is ordered, That the Regulations to Govern the Destruction of Records of Steam Roads, Issue of 1914, a copy of which is now before this Commission, be, and they hereby are, approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, be filed in the office of the Division of Carriers' Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said Regulations be, and they hereby are, prescribed for the use of carriers by rail (exclusive of electric railways) subject to the provisions of the Act to Regulate Commerce, as amended, in the destruction of their accounts, records, and memoranda; and that a copy of the said Regulations be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That each and every such carrier, and each and every receiver or operating

trustee of any such carrier, be, and hereby is, permitted to destroy the accounts, records, and memoranda named or described in the said Regulations, after preserving the same for the periods of time respectively specified and upon complying with the requirements of the Regulations.

It is further ordered, That all accounts, records, and memoranda of such carriers, other than those the destruction of which is permitted in the said Regulations, shall remain under the prohibition of destruction contained in section 20 of the Act to Regulate Commerce, as amended: *Provided, however*, That in case any such carrier desires to destroy any accounts, records, or memoranda other than those hereinafter named it may petition the Commission to that effect, exhibiting a full and detailed description of the accounts, records, or memoranda in question, clearly explaining their character, their use, and their purpose; it being understood that any order entered by the Commission on any such petition shall, unless otherwise provided, be limited in its force and effect to the particular carrier presenting such petition.

It is further ordered, That the said Regulations to Govern the Destruction of Records of Steam Roads, Issue of 1914, shall become effective on July 1, 1914, and that this order shall supersede and cancel the orders of June 10, 1910, June 8, 1911, and October 7, 1912, in the matter of the destruction of records of steam roads.

By the Commission.

[SEAL.] GEORGE B. MCGINTY, *Secretary*.

REGULATIONS TO GOVERN THE DESTRUCTION OF RECORDS OF STEAM ROADS

* * * * *

List of accounts, records, and memoranda, and periods of retention

20. The following list, indicative of accounts, records, and memoranda of steam roads, is specifically referred to by the regulation embodied in paragraph 1. The classification of the accounts, records, and memoranda enumerated below under the various general headings is merely for convenient reference and is more or less arbitrary. The regulations are intended to apply to the items as named or described, regardless of the classification and regardless of where filed. Of the accounts, records, and memoranda which are to be retained permanently only the more important are indicated in the list, such specific mention being made so that they may not be confused with any accounts, records, or memoranda for which permission to destroy is herein given.

Description of accounts, etc.	Period to be retained
* * *	* *
Claims	
* * *	* *
71. Claim papers:	
(a) All papers substantiating overcharge, loss and damage, personal injury, fire, and other claims * * *.	6 years after settlement or rejection.
* * *	* *
Purchases and stores	
* * *	* *
111. Purchases and sales:	
* * *	* *
(d) Bids and offers for the sale or purchase of materials and supplies.	3 years.
* * *	* *
Agencies and yards	
190. Freight records:	
* * *	* *
(e) Orders from consignees for delivery of freight	6 years.
* * *	* *
(g) Orders for the reconsignment of freight	6 years.
* * *	* *
191. Bills of lading and releases:	
(a) Consignors' shipping orders, consignors' shipping tickets * * *	6 years.
* * *	* *
(c) Releases for delivery at outsigatory stations	3 years.
* * *	* *
192. Freight loading records:	
* * *	* *
(c) Records of cars used and ventilated	3 years.
199. Express bills and settlements:	
(a) Copies of express bills for freight and other charges	6 years.
* * * * * *	
200. Miscellaneous collections by agents:	
Records and reports of reconciliation of freight and other charges (with record of refund or disposition) * * * being * * *	6 years.
* * * * * *	
Miscellaneous	
207. Correspondence:	
(a) Correspondence and records thereof relating to subjects listed * * *	For the period prescribed for the records to which the correspondence relates.
* * * * * *	

C

FILED
NOV 28 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 305.

UNITED STATES OF AMERICA, *Appellant*,

vs.

FRUIT GROWERS EXPRESS COMPANY, *a Corporation*.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF.

FOR THE FRUIT GROWERS EXPRESS COMPANY, APPELLEE.

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November, 1928.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF.

FOR THE FRUIT GROWERS EXPRESS COMPANY, APPELLEE.

THE CASE.

A motion to quash the indictment against appellee was sustained in the court below, and the case is here on the appeal of the Government.

Appellee, a non-carrier corporation under contract with the Pennsylvania Railroad to ice certain cars, "for and on behalf" of the Railroad, is alleged to have made incorrect written reports to the Railroad of the quantities of ice applied and that based thereon the Railroad made incorrect freight bills for the icing.

The indictment is for a violation of Section 20(7) of the Interstate Commerce Act relating to the records of common carriers, but it is not contended by the Government that appellee is a common carrier. (Gov. Br. 11.)

The indictment contains 75 counts, but the last 10 counts are abandoned (Gov. Br. 6), and the Government now presses for a decision:

Counts 1-50 inclusive which, referring to the ice reports made by appellee, charge appellee with making false entries in records "kept by a carrier," and

Counts 51-65 inclusive which, referring to "freight bills" prepared and rendered, not by appellee, but by the Pennsylvania Railroad, an interstate common carrier, not indicted, and "innocent" (Gov. Br. 2), charge appellee with making or causing to be made false entries in records "kept by a carrier."

As to the first class of offenses, Counts 1-50 inclusive, the indictment alleges appellee prepared and furnished the ice reports to the Railroad in accordance with its contract so to do, and that the Railroad "received and kept and accepted" them, and the contention of the Government is that because the Railroad retained possession of, or kept in its custody, the said ice reports,

in accordance with the regulations of the Interstate Commerce Commission, the said ice reports were records "kept by a carrier" within the meaning of the statute.

As to the second class of offenses, Counts 51-65 inclusive, it is not alleged that appellee either prepared, or had any control over the preparation of, the "freight bills," nor is it alleged that the Railroad in preparing and rendering them, based upon appellee's ice reports, "wilfully" made false entries therein. The actual "wilful making" of false entries by anyone in the "freight bills," so as to constitute an offense under the statute, is not alleged. No collusion between appellee and the Railroad to make false entries in "freight bills" is alleged. The Government admits the weakness of its contention in regard to these counts (Gov. Br. 11, 26).

THE QUESTION.

The broad question presented is whether or not a non-carrier corporation can be indicted either as a principal or as an abettor, under the provisions of the Act to Regulate Interstate Commerce here involved, which relate solely to the duties and obligations of common carriers engaged in interstate commerce, where it appears that the acts complained of were committed by said non-carrier corporation in the performance of a contract with an interstate carrier and not as an employe thereof.

Incidental to the broad question submitted, the Government's Brief presents the further question of the construction of Section 20(7) of the Interstate Commerce Act, particularly as to the meaning, or sense, in which the word "kept" is there used.

I.

THE AVERMENTS OF FACT.

The essential averred facts in the indictment covering both classes of offenses are the same, and may be summarized as follows:

(a). The Pennsylvania Railroad Company is a common carrier corporation subject to the provisions of the Interstate Commerce Act and Acts amendatory thereof;

(b). The said Railroad Company duly filed with the Interstate Commerce Commission published schedules and tariffs of refrigeration rates and charges for perishable commodities for transit over its lines;

(c). The terms of the refrigeration rates and charges provided that the bunkers of cars containing perishable commodities would be inspected every day from time of arrival to time consignees started to unload the same, and that whenever ice was required in said bunkers sufficient additional ice would be furnished to fill said bunkers, at and for a given price;

(d). The terms and conditions of the refrigerator rates provided that the service was exclusive of and in addition to the lawful rates for transportation;

(e). The appellee is a Delaware corporation, engaged, among other things, in the business of icing and re-icing refrigerator railroad cars;

(f). The appellee was acting at the time of the acts complained of under a written contract with The Pennsylvania Railroad Company, by the terms of which appellee covenanted to inspect and ice and re-ice refrigerator cars for and on behalf of said Railroad

Company as and when said cars were received over its lines in the City of Pittsburgh, Pennsylvania;

(g). The contract with said Railroad Company required that the appellee furnish to the Railroad a "report in writing" of the amount of ice placed in said refrigerator cars, and said reports, purporting to show the amount of ice placed in each car, were furnished to said Railroad Company by the appellee;

(h). The reports provided for as aforesaid were received and accepted by said Railroad Company "as true and correct reports" of the amount of ice placed in each car, and said reports were the only records from which said Railroad Company could make up its accounts and prepare and render bills to the consignees for the icing service rendered;

(i). The reports furnished as aforesaid to said Railroad Company by the appellee were allegedly false in the specific instances set forth in the several counts of the indictment.

See Count 1, Paragraphs 1 to 4 inc., R., pages 1 and 2.

The foregoing averments of fact form the basis in the first fifty counts of the indictment for the charge that the appellee did wilfully make and cause to be made a false entry "in a record kept by a common carrier subject to the Act to regulate Commerce;" and in the counts fifty-one to sixty-five inc., for the charge that the appellee "did wilfully make and cause to be made a false entry in a record kept by a common carrier subject to said Act to regulate Commerce * * *," that is, "in a certain written freight bill kept by said Railroad Company."

See Count 1, Paragraph 5, R., page 2; and Count 51, Paragraph 2, R., page 43.

The foregoing are the essentials of the facts and charges contained in the indictment under consideration here, but before leaving them we respectfully desire the Court to notice particularly with respect thereto:

(a). That said Railroad Company carrier is *not* indicted;

(b). That said Railroad Company carrier received and accepted said reports "as true and correct reports of the amount of ice placed in said bunkers of said cars" (Paragraph 4, R., page 2); and

(c). That appellee was *not* an *employe* of said Railroad Company carrier, but was a corporation engaged, among other things, in icing and re-icing cars *under contract for said Railroad Company* (Paragraph 3, R., page 2).

II.

LAW.

The syllabus of the indictment (R., page 111) cites as the law upon which said indictment is based the following sections of the Interstate Commerce Act:

> "Section 10 (1). That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this Act re-

quired to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: Provided, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property or the transmission of intelligence, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court."

Section 20, Paragraph 7:

"Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term of

not less than one year nor more than three years, or both such fine and imprisonment: Provided, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved."

And Criminal Code, Section 332:

"Principals defined." "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a Principal."

III.

ARGUMENT.

1. The several assignments of error really raise but a single question, namely, can a non-carrier corporation be indicted under the provisions of the Act to regulate Interstate Commerce here involved, either as a principal or an abettor, without an allegation of its having been guilty of collusion with a carrier that is subject to the provisions of that Act? We contend that no such indictment can be sustained, because, under the provisions of either Section 20, Paragraph 7, or Section 10 (1), those who are subject thereto are restricted to *individuals* who bear the specific relationships to the carriers designated in the Act; and that the appellee bears no such relationship.

2. We submit that in order to arrive at the intent and purpose of the legislation, and to find those to whom it applies, Section 10 (1) and Section 20, Paragraph 7, must be construed together.

Section 10 (1) sets forth the intent and purpose of the Act to regulate Commerce where its provisions are to be applied to "corporations" acting as interstate carriers, and specifies the individuals who shall be held responsible for any breach thereof. And with respect to the latter, said section provides that the individuals comprehended therein are "any director or officer of such corporation, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who, alone, or with any other corporation, * * * shall wilfully do or cause to be done, or shall willingly suffer or permit to be done, * * * or who shall aid or abet" in the doing of anything prohibited by the Act.

See Section 10 (1), ante, page 6.

And if we apply the persons designated by the section just quoted from to the provisions of Section 20, Paragraph 7, it would seem to follow that where a common carrier *corporation* is involved, the words "Any person" at the beginning of the latter section must mean "any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation." And that where a breach of the Act on the part of a corporation occurs, the corporation is not subject to indictment, but some one or more of its servants coming within the class designated above must be indicted. This would seem to be clear not only from the context of the Act but upon authority.

In *In Re Peasley*, 44 Fed. 271, the Court says with respect to the foregoing Act that "corporations acting as common carriers between states are not liable criminally for violations of the Interstate Commerce

Act nor are they exposed to its penalties and forfeitures."

And in *Toledo, etc. Railway Company vs. Pennsylvania Company*, 54 Fed. 730, 736, Judge Taft says:

> "By the foregoing section (Section 10) a common carrier which is not a corporation is made liable criminally for violations of the Interstate Commerce Law. But when the carrier is a corporation and violates the law, not the corporation, but its officers, agents and persons acting for or employed by it, who wilfully do the wrongful work, are made liable."

The words "any person" in a statute "cannot be taken to mean any person in the United States, but must be taken to refer to the class with which the statute undertakes to deal." *United States v. Moy*, 241 U. S. 394, 402. The statute now under consideration undertakes to deal with interstate common carriers and with "any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for or employed" thereby. There are no words in the indictment which bring appellee within the meaning of the words "any person" as used in this statute.

If, therefore, it is the guilty *individual* and not the *employer corporation* who is held responsible for the integrity of the records prescribed by the Act, it is difficult to see how an independent, non-carrier corporation can be held criminally liable for a breach of the Act without averment in the indictment of facts that will show that said non-carrier corporation was within the provisions of said Act or that it had been guilty of collusion with some employee of an interstate carrier in wilfully committing the breach complained of.

It is, therefore, important to consider, first, what is

meant by the provisions of Section 20, Paragraph 7, with respect to the records therein provided for.

3. We submit that in the construction of a statute that is highly penal, as is the one under discussion (*Oregon-Washington R. & Nav. Co. vs. U. S.*, 222 Federal Rep., 887, C. C. A., Ninth Circuit; *United States vs. Northern Pacific Railway Co.*, 242 U. S., 190; *United States vs. Tippit*, 298 Fed. 500), words must be given their usual, ordinary meaning, and that the words used in the paragraph under consideration can only be construed to mean the "accounts" *required by law* to be "kept by the carrier"—*i. e.*, in the sense of making entries therein, as distinguished from the data from which they are made. Such construction is the only one that can logically be given when the records referred to are read in the light of other provisions of the Act to regulate Commerce. For example, under the Twentieth Section of the Act to regulate Commerce, the Interstate Commerce Commission is authorized to require annual reports from interstate carriers, which shall contain such information as the Commission may desire, and among other data specifically required are "the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business;" and the Commission may prescribe the time for filing such reports, and "as near as may be, a uniform system of accounts, and the manner in which said accounts shall be kept." And it is therein further provided that "the Commission shall, at all times, have access to all accounts, records, and memoranda *kept* by the carriers subject to this Act, *and it shall be unlawful* for such carriers to *keep any other accounts, records or memoranda* than those prescribed by the Commission" (italics are ours).

And this Court has sustained the constitutionality of the foregoing provisions, and shown the necessity for keeping uniform accounts under rules prescribed by the Commission, in *Interstate Commerce Commission vs. Goodrich Transit Co.*, 224 U. S., 194. In the latter case this Court says, at page 211:

> "The necessity of keeping such accounts has been developed in the reports of the Commission and has been the subject of great consideration. It caused the employment of those skilled in such matters, and has resulted in the adoption of a general form of accounting which will enable the Commission to examine into the affairs of the corporation, with a view to discharging its duties of regulation concerning them."

And again, at page 216:

> "Bookkeeping, it is said, is not interstate commerce. True, it is not. But bookkeeping may and ought to show how a business which, in part at least, is interstate commerce, is carried on, in order that the Commission, charged with the duty of making reasonable rates and prohibiting unfair and unreasonable ones, may know the nature and extent of the business of the corporation, the cost of its interstate transactions and otherwise to inform itself so as to enable it to properly regulate the matters which are within its authority."

And in *United States vs. L. & N. R. R. Co.*, 236 U. S., 318, the Commission undertook to compel a carrier to produce "its correspondence," lists of passes, etc. And upon refusal upon the part of the carrier to furnish the information demanded, the question as to the Commission's rights, and the proper construction of the Interstate Commerce Act, reached this Court.

This Court, after reviewing the history of Section 20 of the Act, and showing that the present requirements of the Act were inserted at the Commission's own request, at page 334, said:

> "If we apply the rule of construction,—*noscitur a sociis*,—*we find that all the provisions of the act as to the inspection of accounts have relation to such as are kept in the system of bookkeeping to be prescribed by the Commission.* It would be a great stretch of the meaning of the term as here used, to make 'memoranda' include correspondence. The 'records' of a corporation import the transcript of its charter and by-laws, the minutes of its meetings—the books containing the accounts of its official doings and the written evidence of its contracts and business transactions. Certainly it was not intended that the Commission should prescribe the forms of correspondence, although it was given the power to prescribe the forms of all accounts, records, and memoranda subject to the provisions of the act." (Italics are ours.)

And again, at page 336:

> "The primary object to be accomplished was to establish a uniform system of accounting and bookkeeping, and to have an inspection thereof. If it intended to permit the Commission to authorize examiners to seize and examine all correspondence of every nature, Congress would have used language adequate to that purpose. A sweeping provision of that nature, attended with such consequences, would not be likely to have been enacted without probable exceptions as to some lines of correspondence required to be kept open and subject to inspection upon demand of the agents of the government."

We submit, therefore, that the foregoing cases demonstrate the fact that the provision of the Act under discussion contemplates a system of bookkeeping *prescribed by the Commission*, and *made up of items from data furnished the bookkeepers of the carriers* from time to time; and that it does *not* apply to the data itself.

And, on the other hand, it appears that the Commission has no jurisdiction to examine into the books of accounts, correspondence, etc., of corporations engaged in business which is related to but is not a part of interstate commerce.

In *Ellis vs. Interstate Commerce Commission*, 237 U. S., 434, the Commission, of its own motion, undertook to investigate "the practice governing the handling and icing of such (private) cars, and the minimum carload lots, etc.," and to that end summoned by subpoena, and attempted to force by a mandamus, the answering of questions put to officers of corporations owning or operating private cars. The question as to the right of the Commission to make such investigation or to compel the divulging of facts by the non-carrier corporations finally reached this Court, which, after a very full analysis of the situation, held, *inter alia*:

> "The Interstate Commerce Commission cannot enlarge its powers to compel testimony from a corporation which, not being subject to regulation by the Commission, is simply in the position of a witness interested in, but a stranger to, the inquiry, by making such corporation a party to the proceeding and serving it with notice." Syllabus "4."

And in *Harriman vs. Interstate Commerce Commission*, 211 U. S., 407, a case very similar to the preced

ing citation, it was held that the *primary* purpose of the Interstate Commerce Act is to *regulate* interstate business of carriers, and the *secondary* purpose, that for which the Commission was established, to *enforce* the regulations enacted by it.

From the context of the Act, and in the light of the foregoing decisions of this Court, we respectfully submit, therefore, that: (a) The accounts to be kept by the carrier, as provided by said Section 20, Paragraph 7, mean the system of bookkeeping that is prescribed by the Commission for its information on the business of the carrier; (b) That it does not apply to the data furnished for making entries in said system of bookkeeping by independent contractors and others performing work for or selling supplies to said carriers; and (c) That the data so furnished, and the books from which said data is taken, are not subject to the supervision of the Interstate Commerce Commission; and that where said data proves incorrect, punishment for furnishing the same must be found elsewhere than under the provisions of the Act to regulate Interstate Commerce.

4. And that an interstate carrier may enter into a contract with a non-carrier corporation for the facilitation of the carrier's business, so long as such contract is not forbidden by Federal Law, would seem to be sustained by a great weight of authority.

In *Cincinnati, N. O. & Texas Pacific Railway Company vs. Interstate Commerce Commission*, 162 U. S., 184, 197, this Court says:

> "Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to

> persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits."

In the *Express Cases*, 117 U. S., 1, a number of Express Companies endeavored to override a contract between a particular Express Company and certain Railroad Companies, which gave to said Express Company a special privilege. This Court, in sustaining the contract giving the single Express Company a right over the various lines, held that Railroad Companies are not required by usage or by the common law to transport the traffic of independent Express Companies over their lines in the manner in which such traffic is usually carried and handled. And at page 24 of the opinion the Court said:

> "So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security."

In *Baltimore & Ohio Railroad Co. vs. Voigt*, 176 U. S., 498, a special contract between a Railroad Com-

pany and an Express Company was sustained. By the contract the Express Company employes were required to execute a release of all claims for injuries sustained by them in the course of employment. An employe was injured and sued the Railroad Company for damages. Held: That the contract and release were valid, and not contrary to law or public policy.

In *Chicago, St. Louis & N. O. R. R. Co. vs. Pullman Southern Co.*, 139 U. S., 79, a contract giving the Pullman Company an exclusive privilege to the use of its cars over the Railroad Company for a specified term was attacked as being in restraint of trade and against public policy. This Court sustained the contract, and at page 89 said, with relation to the contention that it was in restraint of trade:

> "The authorities cited in support of this contention have no application to such a contract as the one before us. The defendant was under a duty, arising from the public nature of its employment, to furnish for the use of passengers on its lines such accommodations as were reasonably required by the existing conditions of passenger traffic. Its duty, as a carrier of passengers, was to make suitable provisions for their comfort and safety. Instead of furnishing its own drawing-room and sleeping cars, as it might have done, it employed the plaintiff, whose special business was to provide cars of that character, to supply as many as were necessary to meet the requirements of travel. It thus used the instrumentality of another corporation in order that it might properly discharge its duty to the public. So long as the defendant's lines were supplied with the requisite number of drawing-room and sleeping cars, it was a matter of indifference to the public who owned them. Express Cases, 117 U. S., 1, 24, 25."

In *Donovan vs. Pennsylvania Company*, 199 U. S., 279, a contract granting a special privilege to the Parmelee Transfer Company to occupy the defendant's terminal premises, to the exclusion of others engaged in a like business, was sustained.

In *Robinson vs. Baltimore & Ohio R. R. Co.*, 237 U. S., 84, a contract between the Railroad Company and the Pullman Company, requiring the latter's employes to execute releases of all damages suffered in the course of transportation, was sustained as not contrary to any statute and in the face of the prohibition of the Employers' Liability Act of 1908, against contracts intended to exempt carriers from the liability imposed by that Act.

In *Berwind-White Coal Mining Co. vs. United States*, 9 F. (2d) 429, 439, the Circuit Court of Appeals (Third Circuit) demonstrates that Congress, the Commission and the Courts have recognized the right of independent companies to own private cars, and to have them transported under agreements with the interstate carriers; and that the Commission has no power over the private car owner.

And in *Ellis vs. Interstate Commerce Commission*, 237 U. S., 434, this Court recognizes the right in a carrier to enter into a contract with an independent corporation for the icing of refrigerator cars, and holds that such corporation cannot be regarded as a common carrier, subject to the Act to regulate Commerce. At page 443, the opinion says:

> "The Armour Car Lines is a New Jersey corporation that owns, manufactures, and maintains refrigerator, tank, and box cars, and that lets these cars to the railroad or to shippers. It also owns and operates icing stations on various lines

> of railway, and from these ices and re-ices the cars, when set by the railroads at the icing plant, by filling the bunkers from the top, after which the railroads remove the cars. The railroads pay a certain rate per ton, and charge the shipper according to tariffs on file with the Commission. Finally it furnishes cars for the shipment of perishable fruits, etc., and keeps them iced, the railroads paying for the same. It has no control over motive power or over the movement of the cars that it furnishes as above, and in short, notwithstanding some argument to the contrary, is not a common carrier subject to the Act."

If then, as seems clear under the foregoing authorities, it is within the power of the interstate carriers to make any contracts they may see fit—so long as they are not prohibited by law—for the facilitation of their business, it would seem to follow that no non-carrier corporation so engaged by contract can be brought within the terms of the Act to regulate Commerce without a clear provision therefor. And that no such provision appears in the Act under discussion, either expressly or by implication, seems so clear as to require no particular consideration.

5. It has been held that the section of the Act here under consideration is a highly penal one and should be applied only to those cases coming clearly within its provisions.

In *United States vs. Northern Pacific Railway Co.*, 242 U. S., 190, a suit was entered to recover the penalty prescribed by an amendment to Section 20 of the Act here under discussion. This Court, in construing the Act at page 194, said:

> "The statute is a penal one and should be applied only to cases coming plainly within its terms.

> Providence Steam Engine Co. vs. Hubbard, 101 U. S., 188, 25 L. ed. 786. While the reports filed must be truthful reports (Yates vs. Jones Nat. Bank, 206 U. S., 158, 51 L. ed. 1002, 27 Sup. Ct. Rep. 638), yet, since they must be made under oath, the penalties for perjury would seem to be the direct and sufficient sanction relied upon by the lawmaking power to secure their correctness."

And again, at page 195:

> "The fact that the government sues for only one fifty-seventh part of the forfeitures which had accrued under the construction of the rule and statute contended for by it should make us slow to attribute to Congress a purpose to exact what is thus admitted to be a punishment greatly disproportionate to the offense. Statutes should be construed, as far as possible, so that those subject to their control may, by reference to their terms, ascertain the measure of their duty and obligation, rather than that such measure should be dependent upon the discretion of executive officers, to the end that ours may continue to be a government of written laws rather than one of official grace."

In the face, therefore, of all the foregoing authorities, and of the context of the Act itself, we earnestly submit and contend that there is not the semblance of a notice to the appellee that, in the performance under contract of one of the legitimate functions of its charter, it, a non-carrier corporation, rendered itself subject to the penal provisions of an Act which specifically relates to *common carriers engaged in interstate commerce*.

6. The indictment by its allegations imposes a duty on the Railroad to perform for the benfit of shippers,

in accordance with its tariffs, but does not allege that this duty was delegated to appellee. Upon the contrary the indictment is clear that appellee undertook as a contractor, and not as an employee, to do certain things "for and on behalf of said Railroad Company," and not for and on behalf of shippers. What the Railroad contracted for appellee to do, and what appellee undertook to do came strictly within the rights of each of them as has been shown.

Under the allegations of the indictment appellee neither assumed, nor was there delegated to it, any duty whatever to shippers. It made its reports to the Railroad. It did not act for the Railroad in dealing with shippers, nor was the responsibility of the Railroad to shippers lessened in any degree because of the contract with appellee. In the *Ellis Case*, *supra*, the Court said (444):

> "The railroads may be made answerable for what they hire from the Armour Car Lines, if they would not be otherwise, but that does not affect the nature of the Armour Car Lines itself."

Appellee concededly, and on authority, not being a common carrier, and not holding itself out to serve the public, *Munn v. Illinois*, 94 U. S. 113, cited by the Government (Gov. Br. 18) has no relevancy.

7. The contention of the Government as to the meaning of the word "kept" in the phrase "kept by a carrier" used in the statute, is inconsistent with the allegations of the indictment regarding the second class of offenses, Counts 51-65 inclusive, dealing with the "freight bills," for the indictment there uses the word "kept" in the sense of prepared, made or entered, as appellee contends it should be used.

The "freight bills" under the allegations were "kept" by the Railroad in the sense that the Railroad prepared them, but were not "kept" in the sense of being retained in the possession of the Railroad, for after being prepared they were "rendered" to the consignee.

The contention of the Government in this regard is further inconsistent with the statute, which forbids a carrier to "keep any other accounts, records or memoranda than those prescribed or approved by the Commission." The ice reports prepared by appellee and furnished to the Railroad are not alleged to have been "prescribed or approved by the Commission" and the Railroad, under the contention of the Government as to the meaning of the word "kept," would violate the statute by retaining said reports in its possession after receiving them. Such conclusion would, obviously, be absurd.

The context of the statute answers the contention of the Government as to the meaning of "kept" for in the proviso to Section 20 (7) the Commission is empowered to prescribe "the length of time such books, papers or documents shall be *preserved*," thus distinguishing the "preparing, making or entering" from the "retaining." The same distinction appears in the Appendix of the Government's Brief (37-38) wherein the Interstate Commerce Commission prescribes a "list of accounts, records and memoranda and periods of *retention*," and heads a column of its regulations: "Period to be *Retained*."

In *Fuller v. United States*, 58 Fed. 329, 333, construing a rule requiring that names be "entered in a book to be kept by the clerk," the Court, against the suggestion then urged and now urged by the Government, held that:

"When we say that the clerk shall 'keep' a record, or that a record shall be 'kept' by the clerk, we do not refer to the mere possession and control of the book in which the matters are recorded, but rather to the work itself of writing up the record."

The case of *Kennedy v. United States*, 275 Fed. 182, cited by the Government (Gov. Br. 19, 20, 21, 22) does not sustain the Government's contention. It is not susceptible of the interpretation urged by the Government that the record there involved was one "kept" by the Terminal Company. It was one "kept" by the Southern Railway. Kennedy was "a clerk in the Charleston Freight Office of the Southern Railway Company," and throughout its opinion the Court distinguishes the Southern Railway as "Railway Company" or as "Carrier," and Charleston Terminal Company as "Terminal Company."

Kennedy, as an employee of the Railway Company, was convicted under a certain count of the indictment of "willfully neglecting and failing to make full, true and correct entries of facts appertaining to the business in records kept by an interstate carrier," to wit, records "kept" by the Southern Railway.

His duty as clerk of the Southern Railway was to issue directions as to the disposition of cars. He kept a book in which was entered a complete record of each car and when a car went to the Terminal Company "he sent a manifest or memorandum."

The Court found (184):

"Kennedy's duty was to keep a true copy of this manifest in the Railway Company's office,"

and held (185):

> "The bill of lading and the record book in the defendant's office show that the shipments were order notify. The charge in the seventh count and the proof was that Car No. 28736 was consigned order notify, and was so entered on the way bill and in the car book *kept* by Kennedy. In the memorandum or manifest sent by Kennedy *officially* to the Terminal Company to indicate the car and whether it was free or order notify, and to control the Terminal Company in handling the car, he deliberately and intentionally omitted the words 'order notify.' This was beyond all dispute willful neglect and failure to make a full, true and correct *entry* of facts appertaining to the *carrier's* business of handling the shipment." (Italics ours.)

Thus it appears the Court held that Kennedy in neglecting to make correct entries in the manifest which he prepared or "kept" and which he later "officially"—that is as the clerk of the Railway Company—sent to the Terminal Company, was guilty of failure to make full, true and correct *entries* of facts "appertaining to the carrier's business of handling the shipment," meaning the Southern Railway's business. His offense was the failure to make correct "entries" in a record "kept" by him as clerk of the Southern Railway.

It is unnecessary to argue that if the Government's contention as to the sense in which the word "kept" is used in the statute is sustained the first 50 counts of the indictment would obviously fall, because under the allegations made the alleged "false entries" in the icing reports were made before said reports reached the Railroad and therefore, under the Gov-

ernment's contention, before they became records "kept by a carrier."

8. Appellee clearly cannot be guilty of the second class of offenses, Counts 51-65 inclusive, which relate to the "freight bills" alleged to have been prepared and rendered by the Railroad.

Criminal Code Section 332, cited by the Government, has no application here, for the Railroad which "kept" or prepared the "freight bills" is not alleged to have "willfully" made any false entries therein, and, therefore, no crime under the statute is alleged of which the appellee could be guilty either as a principal or as an abettor.

Appellee not coming within the class of persons under the statute who could make entries in the "freight bills," and under the allegations of the indictment not having made any entries therein, could not be a principal in the willful making of false entries therein, and there being no principal shown, the Railroad being "innocent," and no collusion between the Railroad and appellee alleged, appellee could not be an abettor in the alleged offense. *United States v. Pyle*, 279 Fed. 290; *Coffin v. United States*, 162 U. S. 664, 667.

9. At the beginning of this brief we called the Court's attention to certain salient facts, namely:

(a). That The Pennsylvania Railroad Company, interstate carrier, is *not* indicted;

(b). That the Government admits that said interstate carrier was free from any blame by averring that the reports complained of were received by said carrier as "true and correct" and by the statement in its brief that the Railroad was "innocent," and

(c). That the appellee is admittedly *not* an employe of the carrier, but was engaged in its own legitimate

business under a written contract, wherein it undertook to perform certain work "for" said carrier.

If, therefore, as appears from the averments of the indictment, the common carrier is free from any criminal connection with the alleged false entries, we submit that the only way by which the appellee can be held to be criminally liable is by demonstrating it to be a *principal under the law cited in the syllabus of the indictment*. And this can only be accomplished by showing that the appellee comes within the terms of the Act as "a person acting for or employed by such corporation (carrier)" (Section 10 (1), ante, page 6).

But we submit that appellee cannot be construed to be "an employe" within the terms of the Act because (a) under the averred facts it is not so named, but, on the contrary, is consistently throughout said averments referred to as "acting under contract;" and (b) the facts show that it is not one of the class of corporate officers or employes designated therein.

Nor can the words "or person acting for or employed by such corporation" be construed to include the appellee.

It is an elementary rule of construction that where specific words in a statute are followed by general words, the latter will be restricted in their meaning to things or matters of the same kind as those first mentioned.

> 13 *Corpus Juris*, Section 501, page 537;
> *Hickman vs. Cabot*, 183 Federal Rep., 748 (C. C. A., Fourth Circuit).

And in Section 10 (1) the clause preceding the general words above quoted restricts those included in

the statute to "any director or officer thereof, or any receiver, trustee, lessee, or agent, or person acting for or employed by such corporation, etc.," (See *ante*, page 6). That is to say, the persons included must be directly connected with the business of the carrier, and subject to its supervision. Consequently, we contend that the appellee does not come either within the provisions of the Act to regulate Commerce here involved as a principal or an abettor, because, as we have hereinabove endeavored to show, it could not be a principal under said provisions of the Act, as it is not subject to such provisions; and it cannot be guilty of abetting without some collusive relationship with one subject to the provisions of the Act.

SUMMARY.

10. In conclusion, and by way of summarization, we, therefore, earnestly contend that under the provisions of the Act to regulate Commerce, and, as well, the various authorities hereinabove cited, this indictment cannot be sustained for the following reasons:

(a). Because the records that are subject to the provisions of the Act are only those which are entered in the books of accounts kept by the carrier in accordance with the prescribed rules of the Commission—the "keeping" of all other records being specifically prohibited by law;

(b). Because the ice reports of appellee referred to in the indictment are manifestly records of a non-carrier, over which the Commission has no jurisdiction;

(c). Because the appellee, in performing the work for the carrier, was acting as an independent contractor, and not as an employe of the carrier;

(d). Because, in making said contract, both the carrier and appellee were acting within their rights, in that the Act does not prohibit said contract, and contracts of like kind have been repeatedly recognized by the Courts;

(e). Because, if the data furnished by the appellee is part of the records covered by the Act under discussion, then every contractor who constructs a steel or concrete bridge that carries a railroad over a ravine or river, and every person or corporation furnishing supplies or work of any kind, and every person filing a telegram with a Telegraph Company for transmission (Gov. Br. 11) is subject to indictment under the provisions of said Act, without notice of such criminal liability in the phraseology of said Act, or under any decision of this Court construing the same; and

(f). Because, if our reasoning be sound that the appellee is not subject to the provisions of the Act under consideration, Section 332 of the Criminal Code can have no application.

CONCLUSION.

The judgment of the District Court, quashing the indictment should be sustained.

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November, 1928.

SUPREME COURT OF THE UNITED STATES.

No. 305.—October Term, 1928.

The United States of America, Appellant, *vs.* The Fruit Growers Express Co.	Appeal from the District Court of the United States for the Western District of Pennsylvania.

[May 13, 1929.]

Mr. Chief Justice Taft delivered the opinion of the Court.

The case is brought here under par. 2 of Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229; 43 Stat. 936, 938. The paragraph was originally enacted in the Act of March 2, 1907, c. 2564; 34 Stat. 1246. It provides for appeals in criminal cases where the decision of the District Court is adverse to the United States and the defendant has not been put in jeopardy.

This review is of an indictment of 75 counts against the Fruit Growers Express Company, a corporation of Delaware, engaged in icing and re-icing refrigerator cars containing shipments of perishable commodities transported to Pittsburgh by the Pennsylvania Railroad, for misreporting ice furnished and falsifying the official records of the Railroad Company showing expenditures made in those shipments. By a contract executed by the two companies on May 1, 1925, the Express Company agreed to perform the icing and other service which the Railroad Company by and through its published schedules and tariffs had stipulated to perform with the shippers of such shipments. The Express Company, as provided in the contract, made and furnished written reports of the quantity of ice placed by it in the bunkers of the cars for the Railroad Company at Pittsburgh. These reports were received and kept by the Railroad Company, and from them the Railroad Company prepared its reports of ice delivered, and rendered bills to the consignees of the shipments at Pittsburgh in accordance with its tariffs and schedules. In the performance of the contract, as the recitals of the counts of the indictment show, the agent of the

Express Company in 59 instances delivered less ice in each car, and in 16 instances more ice in each car, than he reported to the Railroad Company, knowing that his report would be accepted by the Railroad Company as a true and accurate statement of the deliveries. The making of 50 falsified ice reports by defendant's agent was charged in counts 1 to 50. Counts 51 to 65 charged that by falsifying ice reports defendant made and caused to be made false entries in freight bills. Counts 65 to 75 were not urged by the Government as valid. Each count of the indictment involved a separate carload shipment of a perishable commodity, and the falsification by the Express Company was charged to be of an official record "kept by the Railroad Company" under the law. We have inserted in the margin the applicable parts of sections of the Interstate Commerce Act which are here involved.*

*Section 10 (1). "Any common carrier subject to the provisions of this Act or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense. . . ." C. 104, 24 Stat. 379, 382.

Section 20 (7). "Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment. . . ." C. 3591, 34 Stat. 584, 594.

On behalf of the defendant, a motion was made and granted by the District Court to quash the indictment in all its counts, on the ground, first, that the quoted Sections 10 and 20 relied on to support the indictment are really intended only to apply to common carriers, their directors, officers, agents and employees or others acting for and in the interest of carriers or in collusion with them, and not to persons whose only relation to a carrier is that of an independent contractor acting adversely to the carrier's interest in fraud of it and without its knowledge or acquiescence; and second, that the counts of the indictment only denounce the keeping of false or inaccurate official "records kept by the carrier" and do not include records not kept by the carrier like bills, memoranda, and other data furnished by an independent contractor, intentionally misleading the carrier or its agents in keeping its official records.

The question is really one of the construction of the two sections of the statute quoted in the margin and the intent of their penal provisions. The general object of the statute was to require that common carriers should keep reliable records of the receipts and expenditures of and for each shipment which was the subject of transportation. They were intended to be an ultimate protection not to the carriers but to the shippers to secure a proper accounting of the expenditures that might properly be charged to each shipper on the basis of the tariff published in accordance with law. Their importance is shown in *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 211, and *United States* v. *Louisville & Nashville R. R.*, 236 U. S. 318, 334, 336.

It was the duty of the common carrier to provide for the icing and also to furnish reports as to the amount delivered in a record kept by it for the information of shippers and of the Interstate Commerce Commission. But there is no reason why this duty with respect to the furnishing of ice might not be performed by an independent contractor. *Cincinnati, New Orleans & T. P. Ry.* v. *Interstate Commerce Commission*, 162 U. S. 184, 197; *Express Cases*, 117 U. S. 1, 24; *Baltimore & Ohio S. W. Ry.* v. *Voigt*, 176 U. S. 498, 504; *Chicago, St. Louis & New Orleans, R. R.* v. *Pullman Southern Car Co.*, 139 U. S. 79, 89; *Berwind-White Coal Mining Co.* v. *United States*, 9 F. (2d) 429, 439; *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, 443. Such contracts, unless for-

bidden, are legal, but what their civil consequences are is often a question. If the duty performed is one which the common carrier is obliged to perform, the latter is civilly liable for the failure of the independent contractor to perform the carrier's duty. Whether a breach of the duty in such case will lead to criminal liability on the part of the contractor is a question of construction of the statute. Of course if the common carrier were privy to the furnishing of short ice, or to the making of false preliminary data by the independent contractor, both the carrier and the independent contractor would become criminally responsible for the shortage and for the misrepresentation of the official record. But that is not the case we have here. The Railroad Company having certain duties to perform in respect of the shipments attempts to perform them by contract with an outside person not an agent of the carrier, and is itself deceived and defrauded by the contractor and outsider in his failure to perform his contract, so that by the falsification the carrier is led into the making of the erroneous report. In such circumstances, is the outsider to be held guilty of criminality under the above statutory provisions? Congress of course could render these false statements by the defendant a crime, but has it done so in the absence of any collusion by the Railroad Company? It is a nice question, but the statute is a criminal one, and may lead to heavy penalties. A defendant under such circumstances is entitled to a reasonably strict construction of the language used to effect the particular purpose that Congress has in mind. We do not think that Congress was looking to protect an independent contractor against his servants or a common carrier against its independent contractor. A fraud as between them was a matter collateral to the intent and object of the legislation in holding the common carrier and all its agents to strict responsibility to the shipper and the Commission.

If the independent contractor colludes with the common carrier by the false data it furnishes, and the common carrier knowingly uses them, of course the contractor is nothing but an aider and abettor and so a principal in the keeping of the false official records, but otherwise not.

The result is therefore that while the independent contractor might well be penalized by a different statute for the fraud he has committed on the common carrier, we do not think that the present

statutes bring him within the scope of the crime denounced, when the common carrier and its servants are innocent of offense.

It is clear to us that the words "record or memoranda kept by a carrier" contained in Section 20 mean the official record kept by the carrier and do not refer to bills or memoranda kept by the contractor as a basis on which the carrier keeps its records. The defendant's bills or memoranda are not in that sense a record at all under Section 20. They are not subject to the supervision of the Interstate Commerce Commission, and it would seem that if the data proved to be dishonest and incorrect, the punishment for that, unless with the complicity of the common carrier, must be found elsewhere than in the provisions of the present Interstate Commerce Act.

This leads us necessarily to affirm the ruling of the District Court.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.